TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 147

SAM HAWKS, J. F. McKEEL, AND LEW WENTZ, CONSTITUTING THE STATE HIGHWAY COMMISSION OF OKLAHOMA, ET AL., PETITIONERS,

vs.

CHARLES H. HAMILL AND WILLOUGHBY G. WALLING

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 10, 1932

CERTIORARI GRANTED OCTOBER 10, 1932

(36,844)

(36,844)

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TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals
TENTH CIRCUIT.

No. 511

CHARLES H. HAMILL AND WILLOUGHBY G. WALLING, APPELLANTS,

vs.

SAM HAWKS, J. F. McKEAL and LEW WENTZ, CONSTITUTING THE STATE HIGHWAY COMMISSION OF OKLAHOMA; AND J. BERRY KING, ATTORNEY GENERAL OF OKLAHOMA; PURMAN WILSON, COUNTY ATTORNEY OF McCLAIN COUNTY, OKLAHOMA; PERSON WOODALL, COUNTY ATTORNEY OF CLEVELAND COUNTY, OKLAHOMA; AND J. R. EVATT, A. O. MADDOX, J. E. COLBERT, J. C. TODD, GEORGE CARPENTER AND GEORGE N. CHURCH, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

FILED JUNE 29, 1931.

In the District Court of the United States for the Western District of Oklahoma.

Charles H. Hamill, et al., Complainants, vs. Sam Hawks, et al., Defendants. In Equity No. 1224.

Citation on Appeal.

United States of America, ss.

To Sam Hawks, J. F. McKeal and Lew Wentz, Constituting the State Highway Commission of Oklahoma, and J. Berry King, Attorney General of Oklahoma; Purman Wilson,

County Attorney of McClain County, Oklahoma; Person Woodall, County Attorney of Cleveland County, Oklahoma, and J. R. Evatt, A. O. Maddox, J. E. Colbert, J. C. Todd, George Carpenter and George N. Church, Appellees, Greetings:

You are hereby cited and admonished to be and appear in the Circuit Court of Appeals of the United States for the Tenth Circuit, in the City of Denver, State of Colorado, within forty (40) days from the date hereof, pursuant to an order allowing appeal from the District Court of the United States for the Western District of Oklahoma, in a suit wherein Charles H. Hamill and Willoughby G. Walling are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said Charles H. Hamill and Willoughby G. Walling should not be corrected, and why speedy justice should not be done to the parties in their behalf.

Given under my hand this 4 day of June, 1931.

F. E. Kennamer,
Judge of the District Court of the United States
for the Western District of Oklahoma.

Service of a copy of the foregoing citation is acknowledged this 16th day of June, 1931.

W. C. Lewis,

Attorney for Sam Hawks, J. F. McKeal and Lew Wentz, constituting the State Highway Commission of Oklahoma, and J. Berry King, Attorney General of Oklahoma.

Service of a copy of the foregoing citation is acknowledged this 6th day of June, 1931.

Purman Wilson,

Attorney for Purman Wilson, County Attorney of McClain County, Oklahoma, J. R. Evatt, A. O. Maddox and J. E. Colbert.

Service of a copy of the foregoing citation is acknowledged this 5th day of June, 1931.

Person E. Woodall,

Attorney for defendants Person Woodall, County Attorney of Cleveland County, Oklahoma, J. C. Todd, George Carpenter and George N. Church.

Filed June 18, 1931. Theodore M. Filson, Clerk. By Grace G. Butler, Deputy.

In the District Court of the United States for the Western District of Oklahoma.

Charles H. Hamill and Willoughby G. Walling, Complainants, vs. Sam Hawks, J. F. McKeal and Lew Wentz, constituting the State Highway Commission of Oklahoma, and J. Berry King, Attorney General of Oklahoma; Purman Wilson, County Attorney of McClain County, Oklahoma; Person Woodall, County Attorney of Cleveland County, Oklahoma, and J. R. Evatt, A. O. Maddox, J. E. Colbert, J. C. Todd, George Carpenter and George N. Church, Defendants. Equity No. 1224.

Bill of Complaint.

The complainants, Charles H. Hamill and Willoughby G. Walling, complain of the defendants, Sam Hawks, J. F. McKeal and Lew Wentz, constituting the State Highway Commission of Oklahoma; J. Berry King, Attorney General of Oklahoma: Purman Wilson, County Attorney of McClain County, Oklahoma; Person Woodall, County Attorney of Cleveland County, Oklahoma, and J. R. Evatt, A. O. Maddox, J. E. Colbert, J. C. Todd, George Carpenter and George N. Church, and for cause thereof complainants allege:

Complainants are residents and inhabitants of the City of Chicago, in the State of Illinois.

The defendants, Sam Hawks, J. F. McKeal and Lew Wentz

are residents and inhabitants of the Western District of Oklahoma, and they are the duly appointed, qualified and acting members of the State Highway Commission of the State of Oklahoma, and as such they have control and supervision of the State highway system of the State of Oklahoma. The defendant, J. Berry King, is a resident and inhabitant of the Western District of Oklahoma, and is the duly elected, qualified and acting Attorney General of the State of Oklahoma, and as such is the chief law officer of said State, and is authorized by law to institute and carry on proceedings for and in behalf of the State Highway Commission and the State of Oklahoma.

The defendant, Purman Wilson, is a resident and inhabitant of the Eastern District of Oklahoma, and is the duly elected, qualified and acting County Attorney of McClain County, State of Oklahoma, and is the chief law officer of said county.

The defendant, Person Woodall, is a resident and inhabitant of the Western District of Oklahoma, and is the duly elected, qualified and acting County Attorney of Cleveland County, State of Oklahoma, and is the chief law officer of said county.

That the defendants, J. R. Evatt, A. O. Maddox and J. E. Colbert, are residents and inhabitants of the Eastern District of Oklahoma, and the defendants, J. C. Todd, George Carpenter and George N. Church, are residents and inhabitants of the Western District of Oklahoma.

This action is one between citizens and residents of the State of Illinois, as plaintiffs, and citizens and residents of the State of Oklahoma, as defendants, and the amount in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00

That heretofore, on the 22nd day of April, 1911, the County Commissioners of McClain County, State of Oklahoma, granted to Dorset Carter and Tom Halsell, and their assigns, a franchise to construct, erect and maintain a toll bridge across the South Canadian River at or near Purcell, Oklahoma; that the franchise so granted was perpetual, subject

only to such limitations as by law provided. A copy of said franchise is attached hereto, marked Exhibit A, and made a part hereof.

On the 16th day of May, 1911, the Board of County Commissioners of Cleveland County, Oklahoma, granted to Dorset Carter and Tom Halsell, and their assigns, a franchise to construct, maintain and operate a toll bridge, and to collect tolls thereon across the South Canadian River, which franchise was perpetual, subject only to such limitations as provided by law. A copy of said franchise is attached hereto, marked Exhibit B, and made a part hereof.

That on the 20th day of June, 1911, Dorset Carter acquired title by warranty deed executed by H. W. Archer and J. G. Archer to the following described property in the City of Purcell, McClain County, Oklahoma, to wit:

> The tract of land situated in the City of Purcell, McClain County, State of Oklahoma, described as follows: Beginning at the Northwest corner of block ninety-two (92); thence South along the West boundary line of said block a distance of twenty five (25) feet; thence East parallel with the North boundary line of said block a distance of three hundred (300) feet; thence North along the East boundary of said block a distance of twenty-five (25) feet to the Northeast corner of said block; thence West along the North boundary of said block a distance of three hundred (300) feet to the place of beginning, according to the official map of said State.

On the 26th day of April, 1911, Dorset Carter acquired title by warranty deed from H. W. Archer and J. G. Archer to the following described property in McClain County, Oklahoma, to wit:

> A tract of land situated in the City of Purcell, McClain County, State of Oklahoma, described as follows: Beginning at the Northwest corner of block ninety-three (93); thence East forty-nine (49) feet along the North line of said block; thence South parallel with the West line of said block, one hundred and eighty-two (182) feet; thence West forty-nine (49) feet; thence North

along the West line of said block a distance of one hundred and eighty-two (182) feet.

On the 27th day of May, 1911, Dorset Carter acquired by deed from Henry Braum, Trustee, an easement for the purpose of erecting a bridge thereon, and the right to do any and all other acts necessary for the construction and maintenance of such bridge, to continue so long as such bridge shall be maintained, a strip of land situated on the North side of Block 93 in the City of Purcell, McClain County, Oklahoma, described as follows:

> Beginning at the Northeast corner of Block ninety-three (93); thence West along the North line of said block a distance of one hundred and seventy (170) feet; thence South parallel with the West line of said block a distance of twenty (20) feet; thence East and parallel with the North line of said block a distance of one hundred and seventy (170) feet; thence North along the East line of said block a distance of twenty (20) feet to the place of beginning.

That pursuant to the authority granted by the aforesaid franchises, the said Dorset Carter and Tom Halsell commenced the construction of a toll bridge across the South Canadian River extending from a point on the West Side of said river at or near the City of Purcell in the County of McClain, to a point on the East side of said river at or near the City of Lexington in the County of Cleveland, in the State of Oklahoma.

On the 18th day of May, 1911, Willoughby G. Walling, Charles H. Hamill and Dorset Carter caused to be incorporated under the laws of the State of Oklahoma a corporation under the name of Purcell-Lexington Toll Bridge Company, and articles of incorporation were duly filed with the Secretary of State of the State of Oklahoma on said date, incorporating Purcell-Lexington Toll Bridge Company for the purpose of erecting, constructing, building and maintaining, or to lease or purchase and operate the toll bridge and the approaches thereto, over and across the South Canadian River at or near the City of Purcell, McClain County, Okla-

homa, to the East bank of said river into Cleveland County, State of Oklahoma, for the passage of footmen, passengers, cattle, and vehicles of all kinds, and all wires for the transmission of electric currents for speech, light or power, and for pipes and mains for water and gas, and to collect and receive tolls for such service, and to lease or sell such rights over said bridge and the approaches thereto; that said articles of incorporation provide:

> "That the term for which the corporation is to exist is twenty years."

That thereafter, on the 6th day of December, 1911, Dorset Carter, Tom Halsell, Willoughby G. Walling and Charles H. Hamill executed a certain conveyance to Purcell-Lexington Toll Bridge Company, which transferred and conveyed to said Purcell-Lexington Toll Bridge Company that certain bridge then in process of construction across the South Canadian River in the City of Purcell in the County of McClain on the West side to the City of Lexington in the County of Cleveland on the East side, in the State of Oklahoma, with its supports, approaches, toll keeper's house, abutments, lands, franchises and property, and the right to operate and maintain the same, with the tolls to issue therefrom; the right, authority and privilege conferred upon and granted to Dorset Carter and Tom Halsell by the Board of County Commissioners of McClain County in the State of Oklahoma on the 22nd day of April, 1911, to construct, erect, maintain and operate a toll bridge, and to collect the tolls thereon, across the South Canadian River; the right, authority and privilege conferred and granted to Dorset Carter and Tom Halsell by the Board of County Commissioners of Cleveland County in the State of Oklahoma on the 16th day of May, 1911, to construct, erect, maintain and operate a toll bridge, and to collect the tolls thereon, across the South Canadian River, a copy of which conveyance is attached hereto, marked Exhibit C, and made a part hereof. That by virtue of said conveyance, Purcell-Lexington Toll Bridge Company became the owner of the property therein described and the franchise to operate the toll bridge and collect the tolls therefrom.

That on the 4th day of December, 1911, Dorset Carter and

Murphy Carter made, executed and delivered to Purcell-Lexington Toll Bridge Company a warranty deed to the real estate and easement above described. On the 23rd day of September, 1914, H. W. Archer and wife conveyed by warranty deed to Purcell-Lexington Toll Bridge Company the following described property in McClain County, Oklahoma, to wit:

> Beginning at a point 25 feet South of the Northeast corner of Lot 3 in Block 92, thence South 50 feet, thence West 50 feet, thence North 50 feet, thence East 50 feet to place of beginning, all in the town of Purcell in said McClain County, Oklahoma, according to the official map and survey of said city of Purcell.

That the said real estate was acquired by Purcell-Lexington Toll Bridge Company to be used by it as a private road in connection with the operation of the toll bridge across the South Canadian River.

That said Purcell-Lexington Toll Bridge Company completed the construction of the toll bridge across the South Canadian River, and for many years, and until recently, has owned and operated said toll bridge and the private road leading thereto, and has collected tolls from the operation of said toll bridge under the terms of the franchises granted by McClain County and Cleveland County to Dorset Carter and Tom Halsell, and assigned by them to Purcell-Lexington Toll Bridge Company.

That the corporate life of Purcell-Lexington Toll Bridge Company will expire on May 18, 1931, and said corporation will thereupon cease to exist.

That on the 2nd day of April, 1931, Purcell-Lexington Toll Bridge Company made, executed and delivered to Willoughby G. Walling, Charles H. Hamill and Dorset Carter a warranty deed conveying to the said Willoughby G Wallang, Charles H. Hamill and Dorset Carter the real estate located in the City of Purcell owned by the Purcell-Lexington Toll Bridge Company, and above described, and assigning, transferring and conveying unto them the right, authority and privilege conferred and granted to Dorset Carter and Tom

Halsell and their assigns by the Board of County Commissioners of McClain County on the 22nd day of April, 1911, to construct, erect, maintain and operate a toll bridge and to collect the tolls thereon, across the South Canadian River, which right, authority and privilege was assigned, transferred and conveyed by Dorset Carter and Tom Halsell to Purcell-Lexington Toll Bridge Company on December 6, 1911, and the right, authority and privilege conferred and granted to Dorset Carter and Tom Halsell and their assigns by the Board of County Commissioners of Cleveland County in the State of Oklahoma, on the 16th day of May, 1911, to construct, erect, maintain and operate a toll bridge and to collect tolls thereon across the South Canadian River, which said right, authority and privilege was assigned, transferred and conveyed by the said Dorset Carter and Tom Halsell to Purcell-Lexington Toll Bridge Company on December 6, 1911. A copy of said deed is attached hereto, marked Exhibit D, and made a part hereof.

On the 17th day of April, 1931, Dorset Carter made, executed and delivered to Willoughby G. Walling and Charles H. Hamill of Chicago, Illinois, a warranty deed conveying to the said Willoughby G. Walling and Charles H. Hamill all his right, title and interest in and to the property described in the last mentioned deed, and all of his right, title and interest in and to the franchises to operate a toll bridge across the South Canadian River, and to collect tolls thereon, a copy of which deed is attached hereto, marked Exhibit E, and made a part hereof.

That the said Willoughby G. Walling and Charles H. Hamill are now the owners of the private road in the City of Purcell leading to and from the abutment for the Purcell-Lexington toll bridge, and of said toll bridge with its supports, approaches, toll keeper's house, abutments, lands, franchises and property, and the right to maintain and operate the same with the tolls to issue therefrom; that they are now operating said toll bridge and collecting tolls authorized by law, and under the terms of the franchises owned by them, and under which they are operating said toll bridge and collecting tolls therefrom, they have the legal right to continue to operate

said toll bridge and collect tolls therefrom until such franchises have been revoked or repealed as provided by law; that said franchises have not been revoked or repealed and are still effective.

That the defendants, and each of them, are contending that the right to operate said toll bridge and to collect tolls from persons using the same will terminate with the corporate existence of the Purcell-Lexington Toll Bridge Company on the 18th day of May, 1931, and that the said bridge will at that time become a free bridge and a part of the State Highway System of the State of Oklahoma, with the right and privilege of the citizens of the State of Oklahoma to use the same as a public highway without the payment of tolls.

These complainants allege that the franchises to construct, operate and maintain said toll bridge and to collect tolls thereon was granted to individuals, and such franchises are neither connected with nor influenced by the corporate existence of Purcell-Lexington Toll Bridge Company, and the secondary franchise under which complainants are operating said bridge and collecting tolls does not terminate with the corporate life of Purcell-Lexington Toll Bridge Company, and such franchise continues in full force and effect in accordance with the provisions of said secondary franchise. The defendants Sam Hawks, J. F. McKeal and Lew Wentz, constituting the State Highway Commission of the State of Oklahoma, will, unless restrained and enjoined by this court, in violation of the franchise rights of these complainants, take charge of the said Purcell-Lexington toll bridge as a part of the Highway System of the State of Oklahoma, and will deprive these complainants of their private property for the use and benefit of the traveling public of the State of Oklahoma, without compensation, and will interfere with and prevent these complainants from operating said toll bridge and collecting tolls from persons using the same, and are now and will continue to encourage the citizens of the State of Oklahoma in the belief that they have a right to use said bridge without the payment of tolls after May 18, 1931, and by reason thereof it would be practically impossible for these complainants to conduct their business and to collect the tolls

which they are entitled to receive under their franchises, and the business of these complainants and their investment in said bridge will be destroyed; that the defendants, J. R. Evatt, A. O. Maddox, J. E. Colbert, J. C. Todd, George Carpenter and George N. Church, are citizens of the State of Oklahoma, residing in the vicinity of said bridge, and are representative of the citizens of the State of Oklahoma who have occasion to and will use said bridge after May 18,, 1931, and said defendants, and other citizens of the State of Oklahoma having occasion to use said bridge, will, unless restrained and enjoined by this court, use the same without payment of tolls, and complainants will either be compelled to resort to force to prevent the unlawful use of said bridge, or will be compelled to prosecute a multitude of suits for that purpose; that the citizens of the State of Oklahoma who use and will use said bridge are so numerous that it is impossible to make all of them parties, and the above named defendants are fairly representative of the entire class of citizens who travel over and across said bridge.

That the defendants contend that, if complainants shall collect tolls from persons using said bridge after May 18, 1931, they will be subject to a forfeiture of $25.00 to each person from whom toll is collected, and that they will also be guilty of obstructing the public highway and subject to a fine of not exceeding $100.00 for each offense, and will also be liable in damages to the individuals who are prevented from using said bridge.

That J. Berry King, as Attorney General of the State of Oklahoma, has threatened to and will institute injunction proceedings or other legal proceedings against complainants for the purpose of preventing the complainants from operating said bridge and collecting tolls therefrom unless enjoined by this court.

That the defendant, Purman Wilson, County Attorney of McClain County, Oklahoma, and Person Woodall, County Attorney of Cleveland County, Oklahoma, will, unless enjoined by this court, institute proceedings to prevent complainants from operating said bridge and collecting tolls therefrom, and will institute other proceedings to punish the

complainants for the alleged unlawful obstruction of the public highway.

The complainants will be subject to wrongful and unlawful interference with their business in operating said toll bridge by the defendants, and each of them, and subjected to a multiplicity of suits and legal proceedings, and the complainants will be unable to operate their business without serious and imminent danger to persons and property, and without subjecting themselves to a multiplicity of suits and legal proceedings on the part of the defendants and other citizens of the State of Oklahoma desiring to use said toll bridge.

Complainants have no adequate remedy at law, and unless this court will grant an injunction herein these complainants will suffer irreparable injury and damage, and these complainants will be deprived of their property for public use without compensation.

That immediate and irreparable loss or damage will result to the complainants before this matter can be heard on notice, unless a temporary restraining order shall be granted by this court. Complainants offer to submit to such conditions as may be equitable and just upon the granting of said temporary injunction.

Wherefore, premises considered, complainants pray as follows:

That this court will issue a temporary injunction enjoining the defendants, and each of them, and all other persons acting by, through or under them, and all citizens of the State of Oklahoma using the Purcell-Lexington toll bridge, from interfering with the complainants in the operation of said toll bridge, and in the collection of tolls from persons using said toll bridge, and from using said bridge without payment of tolls; enjoining the defendants, and each of them, from taking any proceedings before any tribunal of the State of Oklahoma seeking in any wise to prevent the complainants from operating said toll bridge or collecting tolls from persons using the same, or seeking to punish complainants or collect penalties and forfeitures from complainants

because of the operation of said toll bridge and the collection of tolls from persons using the same; that upon final hearing said temporary injunction so issued be made permanent and perpetual; that a temporary restraining order be issued against the defendants, and each of them, pending the hearing on the application for temporary injunction, and that the complainants have all such other and further relief to which they may be entitled in equity.

C. B. Cochran,
Attorney for Complainant.

Ames, Cochran, Ames & Monnet,
Of Counsel.

State of Illinois, County of Cook, ss.

Charles H. Hamill, being first duly sworn, on oath states: I am one of the complainants in the above entitled action. I have read the above and foregoing bill of complaint and am familiar with the averments therein contained, and the facts stated in said bill are true.

Charles H. Hamill.

Subscribed and sworn to before me this 6th day of May, 1931. Thomas G. Lawrence, Notary Public. My commission expires May 4, 1932. (Seal.)

Exhibit A.

State of Oklahoma, County of McClain, ss.

The Board of County Commissioners of McClain County, State of Oklahoma, met in special session on the 22nd day of April, 1911, pursuant to the call of the County Clerk as follows:

I. C. W. Hoggard, County Clerk of McClain County, Oklahoma, hereby call a meeting of the County Commissioners of McClain County. To meet at the County Seat, Saturday, April 22nd, 1911, at one o'clock P. M. for the purpose of acting upon an application of Dorset Carter and Tom Hal-

sell, for authority and permission to construct, erect and maintain a toll Bridge across the South Canadian River at or near Purcell, Oklahoma.

Dated this 17th day of April, 1911.

C. W. Hoggard,
County Clerk of McClain County.

At which time there were present, L. L. Hawk, Chairman, G. Watt Morris, member, and C. W. Hoggard, County Clerk, and the following business transacted, to wit:

The matter of acting upon the application of Dorset Carter and Tom Halsell, for authority and permission to construct, erect and maintain a Toll Bridge across the South Canadian River at or near Purcell, Oklahoma, coming on for consideration, the following resolution is by the Board adopted:

Be it resolved by the Board of County Commissioners of McClain County, Oklahoma, that, the right, authority and privilege to construct, erect, maintain and operate a toll Bridge and collect tolls thereon across the South Canadian River, be and the same is hereby granted unto Dorset Carter and Tom Halsell, or their assigns, of Purcell, Oklahoma. Said bridge to be erected within the time, as provided by law, or else this authority be null and void.

Section 2. Said bridge shall be constructed across the South Canadian River, beginning at or near a point in the City of Purcell where the East end of Jefferson Street intersects with the South Canadian River, not exceeding 1000 feet North or South thereof, and said bridge to extend across the said river in a general easterdly direction.

Section 3. That the tolls to be collected by the said grantees or assigns, shall be as follows: Private conveyance,

Each vehicle, not exceeding two occupants____25c each way
Each additional passenger _____ 5c each way
Horse and rider _____10c each way
Footman . _____ 5c each way

Public Conveyance.

Passenger vehicle and driver	$50.00 per annum
Each additional passenger	5c each way
Freight vehicle and driver	$25.00 per annum

The tolls above enumerated shall not be increased by the Bridge Co. except as is now and may be hereafter legally provided; but may be reduced by said Bridge Co. upon the posting by them of proper notices as is provided by law.

Section 4. That the grants herein made shall be perpetual, subject only to such limitations as is by law now or may be hereinafter provided.

Section 5. Nothing herein contained shall be construed as giving to the said grantee, or their assigns, the exclusive right to construct and operate a toll bridge over and across said stream, but the power is expressly herein reserved by the said Board of County Commissioners to make other and similar grants to other parties, firms or corporations, as in its judgment, as it may deem expedient.

Section 6. That the grantees may transfer all its rights and privileges herein granted unto any individual or corporation organized under the laws of the State of Oklahoma and the said conveyance by the said grantees vest unto such individuals or corporations all the rights and privileges and concessions herein made and granted, as though such rights, privileges and grants had been made direct to such corporations, provided, however, when the said grantees herein do convey or assign their rights and privileges as herein granted, that the instrument conveying the same to be filed or recorded in the office of the Register of Deeds of McClain County.

Ordered that the Board be and is adjourned.

Approved:

L. L. Hawk, Chairman.

Attest:

C. W. Hoggard, County Clerk.

Exhibit B.

In the Matter of Toll Bridge, ss.

Be it resolved by the Board of County Commissioners of Cleveland County, that the right, authority and the privilege to construct, erect, maintain and operate a toll bridge and to collect tolls thereon, across the South Canadian river be, and the same is hereby granted unto Dorsett Carter and Tom Halsell, or their assigns, of Purcell, Oklahoma. Said bridge to be erected within the time as provided by law, otherwise this authority will be null and void.

Sec. 2. Said bridge shall be erected across said South Canadian River beginning at or near a point where the public highway, located on the section line between Section Six (6) and Seven (7), Township Six (6) North, Range One (1) West, intersects the East bank of the South Canadian River, in Cleveland County and State of Oklahoma, and on the north part of said public highway, and said bridge shall extend in a general westerly direction across the South Canadian River to a point at or near the intersection of Jefferson Street in the City of Purcell, State of Oklahoma. And so much of said public highway, situated on the section line between sections Six (6) and Seven (7), Township Six (6) North, Range One (1) West, not exceeding twenty feet in width and one thousand feet in length, is hereby granted to the said Dorset Carter and Tom Halsell for the purpose of the construction and erection and operation of said bridge and approaches thereto.

Sec. 3. That the tolls to be collected by said grantees, or assigns, shall be as follows:

Private Conveyances.

Each vehicle, not exceeding two occupants	25c each way
Each additional passenger	5c each way
Horse and rider	10c each way
Footmen	5c each way

Public Conveyances.

Passenger vehicle and driver	$50.00 per annum
Freight vehicle and driver	25.00 per annum
Each passenger	5c each way

The tolls above enumerated shall not be increased by the Bridge Company except as is now, or may hereafter be legally provided, but may be reduced by said Bridge Company upon the posting by them of proper notices as is provided by law.

Sec. 4. That the grants herein made shall be perpetual, subject only to such limitations as is by law now or may hereafter be provided.

Sec. 5. Nothing herein contained shall be construed as giving to the said grantees, or their assigns, the exclusive right to construct and operate a toll bridge over, and across said stream, but the power is expressly herein reserved by the Board of County Commissioners to make other and similar grants to other parties, firms or corporations, as in its judgment it may deem expedient.

Sec. 6. That the grantees may transfer all the rights and privileges herein granted unto any individual or corporation, organized under the laws of the State of Oklahoma, and the said conveyance by said grantees shall vest unto such individual or corporation all the rights and privileges and concessions herein made and granted, as though such rights, privileges and grants had been made direct to such corporation, provided, however, when the said grantees herein do convey or assign their rights and privileges as herein granted, that the instrument conveying the same be filed in the office of the Register of Deeds of Cleveland County.

Attest:
(Seal) J. A. Fox, Chm. Board of Co. Comm.

State of Oklahoma, Cleveland County, ss.

I. E. B. Helms, County Clerk of the aforesaid County and State, do hereby certify that the above and foregoing is a true and correct copy of part of the Commissioners' Proceedings of May 16th, 1911.

In testimony whereof I set my hand and official seal this 27th day of June, 1928.

(Seal) E. B. Helms,
County Clerk.

Exhibit C.

This indenture, made this 6th day of December, A. D. 1911, by and between Dorset Carter and Tom Halsell, both of the City of Purcell, State of Oklahoma, and Willoughby G. Walling and Charles H. Hamill, both of the City of Chicago, State of Illinois, parties of the first part, and Purcell-Lexington Toll Bridge Company, a corporation, organized and existing under and by virtue of the laws of the State of Oklahoma, party of the second part, witnesseth: That

For and in consideration of the sum of One Hundred ($100.00) Dollars, by the party of the second part, unto the parties of the first part paid, and other good and valuable considerations, the receipt whereof is hereby acknowledged, the parties of the first part have granted, bargained, sold, remised—aliened, conveyed, assigned, and transferred and by these presents do grant, bargain, sell, remise, alien, convey, assign and transfer, unto said party of the second part;

(a) That certain bridge now in process of construction across the South Canadian River from the City of Purcell in the County of McClain, on the West side, to the City of Lexington in the County of Cleveland on the East side, in the State of Oklahoma, with its supports, approaches, toll-keeper's house, abutments, lands, franchises and property, and the right to operate and maintain the same with the tolls to issue therefrom.

(b) The right, authority and privilege conferred upon and granted to Dorset Carter and Tom Halsell, by the Board of County Commissioners of McClain County, in the State of Oklahoma, on the 22nd day of April, 1911, to construct, erect, maintain and operate a toll bridge, and to collect the tolls thereon, across the South Canadian River.

(c) The right, authority and privilege conferred and granted to Dorset Carter and Tom Halsell, by the Board of County Commissioners of Cleveland County in the State of Oklahoma, on the 16th day of May, 1911, to construct, erect, maintain and operate a toll bridge and to collect the tolls thereon, across the South Canadian River.

Together with all the estate, right, title and interest of the said parties of the first part or any one or more of them in and to the above described bridge and premises, and all the rights, privileges and appurtenances, now or hereafter appertaining thereto.

To have and to hold the same, together with the tolls, rents, issues and profits arising and to arise therefrom, unto the said party of the second part, that at the time of the ensealing and delivering of these presents, said parties of the first part are well seized of said bridge and premises, and the property hereby conveyed or sought to be conveyed, in fee simple, and that they have full right and power to grant, bargain and sell the same in manner and form as aforesaid, that the same are free and clear of all liens and encumbrances whatever, and the said parties of the first part will warrant and forever defend the same to the said Purcell-Lexington Toll Bridge Company, its successors, or successors and assigns, against all claims whatsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Seal) Dorset Carter.
(Seal) Tom Halsell.
(Seal) Willoughby G. Walling.
(Seal) Charles H. Hamill.

State of Oklahoma, County of McClaim, ss.

Before me, a Notary Public in and for said county and State, on this 11 day of December, 1911, personally appeared Dorset Carter and Tom Halsell, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

(Seal) M. L. Barnett, Notary Public.

State of Illinois, County of Cook, ss.

I, William J. Mack, a Notary Public, do hereby certify that Willoughby G. Walling and Charles H. Hamill, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 7th day of December, A. D. 1911.

(Seal) William J. Mack, Notary Public.

State of Oklahoma, McClain County, ss.

This instrument was filed for record on the 11 day of Dec., 1911, at 11:45 A. M. and duly recorded. C. M. McClain, Register of Deeds.

State of Oklahoma, County of McClain, ss.

I, Pearl Daugherty, County Clerk in and for said County and State, do hereby certify that the above and foregoing is a true and correct copy of deed as the same appears of record in my office in the City of Purcell, in book 28 at page 152.

Witness my hand and official seal this the 3rd day of July, 1928.

Pearl Daugherty, County Clerk,
By Mabele Cox, Deputy.

Exhibit D.

Deed.

This indenture, made this 2nd day of April, A. D. 1931, by and between Purcell-Lexington Toll Bridge Company, a corporation, organized and existing under and by virtue of the laws of the State of Oklahoma, party of the first part, and Willoughby G. Walling, Charles H. Hamill and Dorset Carter, parties of the second part, witnesseth as follows, to wit:

That for and in consideration of the sum of Ten Dollars ($10.00) paid by parties of the second part unto party of the first part, and other good and valuable considerations, the receipt of which is hereby acknowledged, the party of the first part has granted, bargained, sold, remised, aliened, conveyed, assigned and transferred, and by these presents does grant, bargain, sell, remise, alien, convey, assign and transfer unto said parties of the second part:

(a) That certain bridge across the South Canadian River extending from a point on the West side of said river at or near the City of Purcell in the County of McClain, to a point on the East side of said river at or near the City of Lexington in the County of Cleveland, in the State of Oklahoma, said bridge being known as the Purcell-Lexington Toll Bridge; together with its supports, approaches, toll keeper's house; abutments, lands, franchises and property, and the right to operate and maintain the same, with the tolls to issue therefrom.

(b) The tract of land situated in the City of Purcell, McClain County, State of Oklahoma, described as follows: Beginning at the Northwest corner of block ninety-two (92); thence South along the West boundary line of said block a distance of twenty-five (25) feet; thence East parallel with the North boundary line of said block a distance of three hundred (300) feet; thence North along the East boundary of said block a distance of twenty-five (25) feet to the Northeast corner of said block; thence West along the North boundary of said block a distance of three hundred (300) feet to the place of beginning, according to the official map of said City.

(c) A tract of land situated in the City of Purcell, McClain County, State of Oklahoma, described as follows: Beginning at the Northwest corner of block ninety-three (93); thence East forty-nine (49) feet along the North line of said block; thence South parallel with the West line of said block, one hundred and eighty-two (182) feet; thence West forty-nine (49) feet; thence North along the West line of said block a distance of one hundred and eighty-two (182) feet.

(d) An easement to enter upon and make use of the following strip of ground for the purpose of erecting a bridge thereon, with the right to rest the supports for said bridge, and to do any and all other acts necessary for the contruction and maintenance of such bridge, to continue so long as said bridge shall be maintained, to-wit, a strip of land situated on the North side of block ninety-three (93) in the City of Purcell, County of McClain and State of Oklahoma, beginning at the Northeast corner of block ninety-three (93), thence West along the North line of said block a distance of one hundred and seventy (170) feet; thence South parallel with the West line of said block a distance of twenty (20) feet; thence East and parallel with the North line of said block a distance of one hundred and seventy (170) feet; thence North along the East line of said block a distance of twenty (20) feet to the place of beginning.

(e) A tract of land situated in the City of Purcell, McClain County, State of Oklahoma, described as follows: Beginning at a point twenty-five (25) feet South of the Northeast corner of Lot Three (3) in Block Ninety-two (92); thence South fifty (50) feet; thence West fifty (50) feet; thence North fifty (50) feet; thence East fifty (50) feet to the place of beginning.

(f) The right, authority and privilege conferred upon and granted to Dorset Carter and Tom Halsell, and their assigns, by the Board of County Commissioners of McClain County in the State of Oklahoma, on the 22nd day of April, 1911, to construct, erect, maintain and operate a toll bridge, and to collect the tolls thereon across the South Canadian River, which right, authority and privilege was assigned, transferred and conveyed by the said Dorset Carter and Tom Halsell to Purcell-Lexington Toll Bridge Company on December 6, 1911.

(g) The right, authority and privilege conferred upon and granted to Dorset Carter and Tom Halsell and their assigns, by the Board of County Commissioners of Cleveland County in the State of Oklahoma, on the 16th day of May, 1911, to construct, erect, maintain and operate

a toll bridge, and to collect the tolls thereon across the South Canadian River, which said right, authority and privilege was assigned, transferred and conveyed by the said Dorset Carter and Tom Halsell to Purcell-Lexington Toll Bridge Company on December 6, 1911;

together with all the estate, right, title and interest of the said party of the first part in and to the above described bridge and premises, and all the rights, privileges and appurtenances now or hereafter appurtaining thereto, and warrant the title to the same.

To have and to hold the same, together with the tolls, rents, issues and profits arising and to arise therefrom, unto the said parties of the second part, their successors and assigns forever.

Signed and delivered this second day of April, 1931.

Purcell-Lexington Toll Bridge Company,

By (Signed) Willoughby G. Walling,
President.

(Seal)

Attest:

(Signed) Charles H. Hamill,
Secretary.

State of Illinois, County of Cook, ss.

Before me, a Notary Public in and for said County and State, on this 7th day of April, 1931, personally appeared Willoughby G. Walling, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written. (Signed) George R. Honsinger, Notary Public. (Seal.). My commission expires August 27th, 1931.

State of Illinois, County of Cook, ss.

Before me, a Notary Public in and for said county and

State, on this ninth day of April, 1931, personally appeared Charles H. Hamill, Secretary of the Purcell-Lexington Toll Bridge Company (a corporation), and to me known to be the identical person who subscribed the foregoing instrument as the secretary of said corporation, and acknowledged to me that he executed the said instrument and caused the corporate seal of the said corporation to be affixed thereto as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written. (Signed) Florence E. Lund, Notary Public (Seal). My commission expires December 13, 1934.

Exhibit E.

Deed.

This indenture, made this 17th day of April, A. D. 1931, by and between Dorset Carter of Oklahoma County, Oklahoma, party of the first part, and Willoughby G. Walling and Charles H. Hamill of Chicago, Illinois, parties of the second part, witnesseth as follows, to wit:

That for and in consideration of the sum of Ten Dollars ($10.00) paid by parties of the second part unto party of the first part, and other good and valuable considerations, the receipt of which is hereby acknowledged, the party of the first part has granted, bargained, sold, remised, aliened, conveyed, assigned and transferred, and by these presents does grant, bargain, sell, remise, alien, convey, assign and transfer unto said parties of the second part, all of his right, title, interest and estate in and to the following described property, to wit:

(a) That certain bridge across the South Canadian River extending from a point on the West side of said river at or near the City of Purcell in the County of McClain, to a point on the East side of said river at or near the City of Lexington in the County of Cleveland, in the State of Oklahoma, said bridge being known as

the Purcell-Lexington Toll Bridge; together with its supports, approaches, toll keeper's house; abutments, lands, franchises and property, and the right to operate and maintain the same, with the tolls to issue therefrom.

(b) The tract of land situated in the City of Purcell, McClain County, State of Oklahoma, described as follows: Beginning at the Northwest corner of block ninety-two (92); thence South along the West boundary line of said block a distance of twenty-five (25) feet; thence East parallel with the North boundary line of said block a distance of three hundred (300) feet; thence North along the East boundary of said block a distance of twenty-five (25) feet to the Northeast corner of said block; thence West along the North boundary of said block a distance of three hundred (300) feet to the place of beginning, according to the official map of said City.

(c) A tract of land situated in the City of Purcell, McClain County, State of Oklahoma, described as follows: Beginning at the Northwest corner of block ninety-three (93); thence East forty-nine (49) feet along the North line of said block; thence South parallel with the West line of said block, one hundred and eighty-two (182) feet; thence West forty-nine (49) feet; thence North along the West line of said block a distance of one hundred and eighty-two (182) feet.

(d) The easement to enter upon and make use of the following strip of ground for the purpose of erecting a bridge thereon, with the right to rest the supports for said bridge, and to do any and all other acts necessary for the construction and maintenance of such bridge, to continue so long as said bridge shall be maintained, to-wit, a strip of land situated on the North side of block ninety-three (93) in the City of Purcell, County of McClain and State of Oklahoma, beginning at the Northeast corner of block ninety-three (93); thence West along the North line of said block a distance of one hundred and seventy (170) feet; thence South parallel with the West line of said block a distance of twenty (20) feet;

thence East and parallel with the North line of said block a distance of one hundred and seventy (170) feet; thence North along the East line of said block a distance of twenty (20) feet to the place of beginning.

(e) A tract of land situated in the City of Purcell, McClain County, State of Oklahoma, described as follows: Beginning at a point twenty-five (25) feet South of the Northeast corner of Lot Three (3) in Block Ninety-two (92); thence South fifty (50) feet; thence West fifty (50) feet; thence North fifty (50) feet; thence East fifty (50) feet to the place of beginning.

(f) The right, authority and privilege conferred upon and granted to Dorset Carter and Tom Halsell, and their assigns, by the Board of County Commissioners of McClain County in the State of Oklahoma, on the 22nd day of April, 1911, to construct, erect, maintain and operate a toll bridge, and to collect the tolls thereon across the South Canadian River, which right, authority and privilege was assigned, transferred and conveyed by the said Dorset Carter and Tom Halsell to Purcell-Lexington Toll Bridge Company on December 6, 1911.

(g) The right, authority and privilege conferred upon and granted to Dorset Carter and Tom Halsell, and their assigns, by the Board of County Commissioners of Cleveland County in the State of Oklahoma, on the 16th day of May, 1911, to construct, erect, maintain and operate a toll bridge, and to collect the tolls thereon across the South Canadian River, which said right, authority and privilege was assigned, transferred and conveyed by the said Dorset Carter and Tom Halsell to Purcell-Lexington Toll Bridge Company on December 6, 1911;

together with all the estate, right, title and interest of the said party of the first part in and to the above described bridge and premises, and all the rights, privileges and appurtenances now or hereafter appurtaining thereto, and warrant the title to the same.

To have and to hold the same, together with the tolls, rents, issues and profits arising and to arise therefrom, unto

the said parties of the second part, their successors and assigns forever.

Signed and delivered this 17th day of April, 1931.

(Signed) Dorset Carter.

State of Oklahoma, County of Oklahoma, ss.

Before me, a Notary Public in and for said county and State, on this 17th day of April, 1931, personally appeared Dorset Carter, to me known to be the identical person who executed the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written. (Signed) Emma Seberger, Notary Public (Seal). My commission expires Jan. 12, 1933.

Endorsed: Filed in District Court on May 15, 1931.

Temporary Restraining Order.

On this 15th day of May, 1931, the application of complainants for a temporary restraining order comes on for hearing, the complainants appearing by their counsel, C. B. Cochran.

Thereupon the complainants introduced their verified bill, and upon consideration thereof the court finds that a temporary restraining order should be, and hereby is, granted in this case to this effect:

That the defendants, and each of them, and all persons acting by, through, or under them, and all citizens of the State of Oklahoma using the Purcell-Lexington Toll Bridge, be, and they are, hereby restrained from interfering with the complainants in the operation of the Purcell-Lexington toll bridge, and in the collection of tolls from persons using said toll bridge, and from using said bridge without payment of

tolls, and said defendants, and each of them, are further restrained from taking any proceeding before any tribunal of the State of Oklahoma seeking in any wise to prevent the complainants from operating said toll bridge, or collecting tolls from persons using the same, or seeking to punish complainants or collect penalties or forfeitures from complainants because of the operation of said toll bridge and the collection of tolls from persons using the same.

It is further ordered that this restraining order shall be in force and effect for ten (10) days only, unless otherwise ordered, and in no event to be in force and effect, unless reordered, beyond the time of the decision herein upon complainants' application for a temporary injunction.

It is further ordered that the hearing on complainants' application for a temporary injunction is hereby set for the 23rd day of May, 1931, at 10 o'clock A. M. in the United States Court Room at Oklahoma City, Oklahoma.

It is further ordered that complainant shall execute a bond to the defendants in the sum of Five Thousand ($5,000.00) to be approved by this court, conditioned that complainants will deliver to each person paying toll during the pendency of this restraining order a receipt for the toll so paid, and further conditioned that the complainants will return the toll collected during the pendency of this restraining order to the holder or holders of said receipts in the event such return shall be ordered by this court.
May 15th, 1931.

Edgar S. Vaught,
District Judge.

Endorsed: Filed in District Court on May 15, 1931.

Bond.

Know all men by these presents:—

That Charles H. Hamill and Willoughby G. Walling, as principals, and The Aetna Casualty and Surety Company of Hartford, Connecticut, as surety, acknowledge ourselves

bound unto Sam Hawks, J. F. McKeal, and Lew Wentz, constituting the State Highway Commission of Oklahoma, and J. Berry King, Attorney General of Oklahoma; Purman Wilson, County Attorney of McClain County, Oklahoma; Person Woodall, County Attorney of Cleveland County, Oklahoma, and J. R. Evatt, A. O. Maddox, J. E. Colbert, J. C. Todd, George Carpenter and George N. Church, in the sum of Five Thousand Dollars ($5,000.00) for the payment of which well and truly to be made according to the terms and conditions of this bond, we bind ourselves, our heirs, successors and assigns.

This bond is conditioned that if Charles H. Hamill and Willoughby G. Walling shall cause to be delivered to each person paying toll for the use of Purcell-Lexington toll bridge beginning May 18, 1931, and during the pendency of the restraining order issued herein on May 15, 1931, a receipt for the toll so paid, and that they will return the toll collected during said period to the holder or holders of said receipts in the event such return shall be ordered by this court, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

Dated this 16th day of May, 1931.

Willoughby G. Walling,
Charles H. Hamill,

By C. B. Cochran,
Their Attorney,

Principals.

The Aetna Casualty and Surety Company of Hartford, Connecticut,

By E. R. Ledbetter,

(Seal) Attorney-in-fact,
Surety.

Approved May 19, 1931. Edgar S. Vaught, Judge.

Endorsed: Filed in District Court on May 19, 1931.

Amendment to Bill of Complaint.

Comes now the complainants, and permission of court having been first obtained for amendment to their bill of complaint, state as follows:

Complainants allege that the conveyance executed by Dorset Carter, Tom Halsell, Willoughby G. Walling and Charles H. Hamill to Purcell-Lexington Toll Bridge Company on December 6, 1911, conveying and assigning to Purcell-Lexington Toll Bridge Company the rights and privileges granted by the franchise from the County Commissioners of McClain County, Oklahoma, and the franchise from the County Commissioners of Cleveland County, Oklahoma, which said conveyance is attached to the bill of complaint and designated Exhibit C, was recorded in the office of the Register of Deeds of Cleveland County, Oklahoma, on the 12th day of December, 1911, in Book 33, at Page 626, and was recorded in the office of the Register of Deeds of McClain County, Oklahoma, on the 11th day of December, 1911, in Book 28 at Page 153; that the deed of Purcell-Lexington Toll Bridge Company to Willoughby G. Walling, Charles H. Hamill and Dorset Carter, dated April 2, 1931, and assigning and conveying to the said Willoughby G. Walling, Charles H. Hamill and Dorset Carter the rights and privileges to own and operate Purcell-Lexington toll bridge, and to collect tolls therefrom in accordance with the franchises granted by the County Commissioners of McClain County and Cleveland County, which said conveyance is attached to the bill of complaint and designated Exhibit D, was recorded in the office of the County Clerk of Cleveland County, Oklahoma, on May 15, 1931, in Book 87 at Page 388, and was recorded in the office of the County Clerk of McClain County, Oklahoma, on the 16th day of May, 1931, in Book 97 at Page 112; that the deed from Dorset Carter to Willoughby G. Walling and Charles H. Hamill, assigning and transferring to the said Willoughby G. Walling and Charles H. Hamill the right, authority and privilege to operate Purcell-Lexington toll bridge and to collect tolls therefrom according to the franchises granted by the County Commissioners of Cleveland

County, Oklahoma, and McClain County, Oklahoma, which said deed is attached to the bill of complaint as Exhibit E, was recorded in the office of the County Clerk of Cleveland County, Oklahoma, on May 15, 1931, in Book 87 at Page 390, and recorded in the office of the County Clerk of McClain County, Oklahoma, on the 16th day of May, 1931, in Book 97 at Page 113.

C. B. Cochran,
Attorney for Complainants.

Endorsed: Filed in District Court on May 25, 1931.

Motion of Defendants, Purman Wilson, County Attorney of McClain County, Oklahoma, and J. R. Evatt, A. O. Maddox, and J. E. Colbert, County Commissioners of McClain County, Oklahoma, to Dismiss Bill of Complaint.

Come now the defendants, Purman Wilson, County Attorney of McClain County, Oklahoma, and J. R. Evatt, A. O. Maddox, and J. E. Colbert, County Commissioners of McClain County, Oklahoma, and move the court to dismiss the above entitled cause for the reason that the bill of complaint does not state facts sufficient to entitle complainants to relief prayed for or to any relief.

Purman Wilson,

Solicitor for the Defendants, Purman Wilson, County Attorney of McClain County, Oklahoma, J. R. Evatt, A. O. Maddox and J. E. Colbert, County Commissioners of McClain County, Oklahoma.

Endorsed: Filed in District Court on May 25, 1931.

Motion of Defendants, Person Woodall, County Attorney of Cleveland County, Oklahoma, and J. C. Todd, George Carpenter and George N. Church, County Commission-

ers of Cleveland County, Oklahoma, to Dismiss Bill of Complaint.

Come now the defendants, Person Woodall, County Attorney of Cleveland County, Oklahoma, and J. C. Todd, George Carpenter, and George N. Church, County Commissioners of Cleveland County, Oklahoma, and move the court to dismiss the above entitled cause for the reason that the bill of complaint does not state facts sufficient to entitle complainants to relief prayed for or to any relief.

Person E. Woodall,

Solicitor for the Defendants, Person Woodall, County Attorney of Cleveland County, Oklahoma, and J. C. Todd, George Carpenter, and George N. Church, County Commissioners of Cleveland County, Oklahoma.

Endorsed: Filed in District Court on May 25, 1931.

Motion of the Defendants, Sam Hawks, J. F. McKeel, and Lew Wentz, Constituting the State Highway Commission of Oklahoma; and J. Berry King, Attorney General of Oklahoma, to Dismiss the Bill of Complaint.

Come now the defendants, Sam Hawks, J. F. McKeel, and Lew Wentz, constituting the State Highway Commission of Oklahoma, and J. Berry King, Attorney General of Oklahoma, and move the court to dismiss the bill of complaint herein upon the following grounds:

I.

That the movants herein are officers of the executive branch of State Government of Oklahoma, and that this is a suit against the State of Oklahoma, and that the State of Oklahoma has not consented to be sued, as provided in the Eleventh Amendment to the United States Constitution.

II.

That the bill of complaint does not state facts sufficient to entitle the complainants to any relief, there being no equity stated in the bill.

III.

That the defendants, Sam Hawks, J. F. McKeel, and Lew Wentz, constituting the State Highway Commission of Oklahoma, and J. Berry King, Attorney General of Oklahoma, are officers of the executive branch of the State Government of Oklahoma, and any action taken by them as such officers is and would be in behalf of the Sovereign State of Oklahoma, and that the State of Oklahoma is not a citizen within the meaning of the Judiciary Acts of the United States of America which authorize suits in the Federal Courts on the ground of diverse citizenship.

Wherefore, said defendants pray that the bill of complaint filed herein may be dismissed.

J. Berry King,
Attorney General of the State of Oklahoma.

W. C. Lewis,
Assistant Attorney General,

Solicitors for Defendants, Sam Hawks
J. F. McKeel and Lew Wentz.

Endorsed: Filed in District Court on May 25, 1931.

[Opinion.]

In Equity. Complainants by their bill seek an injunction against defendants to enjoin them from interfering with complainants operating and collecting tolls upon a bridge over the South Canadian River between McClain and Cleveland Counties, Oklahoma. Application for temporary injunction denied, and complainants' bill dismissed.

Mr. C. B. Cochran (Ames, Cochran, Ames & Monett, of

counsel), all of Oklahoma City, Oklahoma, for the complainants.

Mr. J. Berry King, Attorney General, and Mr. W. C. Lewis, Assistant Attorney General, of Oklahoma City, Oklahoma, for the defendants.

Kennamer, District Judge: The exhibits to the petition show that Carter, et al., filed applications with the Boards of County Commissioners of Cleveland and McClain Counties for permission to construct a bridge over the South Canadian River and to collect tolls. The Board of County Commissioners of McClain County on the 22nd day of April, 1911, passed a resolution making the grants as prayed for; and the Board of County Commissioners of Cleveland County on the 16th day of May, 1911, did likewise. The grants in both resolutions are perpetual, subject to such limitations as are by law now or may hereafter be provided. Both resolutions further provide that the grants are assignable to any individual or corporation.

The McClain County resolution also provides that the bridge shall be erected within the time provided by law or else the authority granted shall lapse. The Cleveland County grant authorizes the grantees to use so much of the public highway as may be necessary. It is expressly provided that neither grant shall be exclusive. In both grants, reference is made to the "Bridge Company."

There is also attached to the complainants' petition an assignment to a Bridge Company of all the rights acquired by Carter, et al., by virtue of the grants from the counties, together with that portion of the bridge which it is recited was then in process of construction and which was later completed by the corporation.

I am unable to find in the statutes any section expressly authorizing the construction of bridges within the state by individuals, but Article 6 of Chapter 34, C. O. S. 1921, provides for the incorporation of Bridge Companies.

Section 5366, C. O. S. 1921, limits the term of existence of

such corporations to twenty years and provides further that the articles of incorporation shall give the location of the bridge and shall state if the corporation owns the banks on both sides of the stream; and if it does not own such banks, that it has obtained the consent of the owners thereof to the erection of the bridge; or if the banks at such places are included within and are a part of a public highway, that the consent of the Board of County Commissioners has been obtained.

Section 5367, C. O. S. 1921, is as follows:

> "No such corporation shall construct or take tolls on a bridge until authority is granted therefor by the board of county commissioners of the county or counties in which it is to be located."

Section 5368, C. O. S. 1921, provides that the corporate existence of a bridge company shall terminate unless it has obtained from the board of county commissioners the authority mentioned in Section 5367, and unless it has within one year commenced the construction of its bridge. The second paragraph of this section provides that its corporate existence shall terminate if the bridge is not completed within three years from the issuance of the corporation's charter.

It is clear from a consideration of Sections 5366 and 5367 that the latter section is a limitation upon the power of the corporation created under the authority of Section 5366. Such corporation is not authorized after the construction of such bridge to collect tolls unless it obtains authority from the County Commissioners of the county where such bridge is located, and it is quite plain authority to collect tolls cannot be extended by the County Commissioners granting such authority beyond the life of the corporation. This, for the reason it is only corporations chartered for a period of twenty years that have authority from the sovereign to build and construct and operate toll bridges over the streams of the State, and the authority is limited in time to twenty years to such corporation, and it is beyond the power of the County Commissioners to authorize the collection of tolls

by such corporations beyond the period of limitation fixed by the Legislature.

Article 18, Chapter 34, C. O. S. 1921, provides for the incorporation of Wagon Road Corporations.

Section 5625, C. O. S. 1921, states that the road must be laid out as follows:

> "Three commissioners appointed as specified must lay out the proposed road and report their proceedings, accompanied by a map, to the board of county commissioners."

Section 5626, C. O. S. 1921, provides that the report must give the road's general course, the principal points thereon, its width, and the same must then be either approved or rejected by the board of county commissioners.

Section 5627, C. O. S. 1921, provides that Wagon Road Corporations may keep ferries or establish bridges on the line of their road and that they may take only such tolls on their roads, ferries or bridges as are fixed by the board of county commissioners of the county through which the road passes, or in which the ferry or bridge is situated.

Section 5636, C. O. S. 1921, reads as follows:

> "When a wagon, turnpike or plank road is constructed, owned or operated by any natural person, this article is applicable to such person in like manner as it is applicable to corporations."

It is obvious from the grants that the grantees were not endeavoring to proceed under the wagon road incorporation article. Nothing is said therein with reference to the commissioners, the survey or anything about a road. This article clearly contemplates that bridges and ferries which may be established are for the purpose of connecting two sections of the road or are for the purpose of providing access to the road.

It would seem to be quite clear from the grants that an effort was made to comply with the Bridge Corporation ar-

ticle. No reference is made in either grant to any permission to construct a road. A bridge alone is referred to, and the grants from the Commissioners contain express authority to collect tolls as is provided in Section 5367, C. O. S. 1921.

It is set forth in the bill of complaint that this right to take tolls was granted to individuals, who in turn assigned the same to a corporation, which constructed the bridge and which prior to the expiration of its charter conveyed the bridge, together with the right to take tolls, to complainants. The grant to the individuals undoubtedly from the allegations of the bill and the evidence introduced on the hearing was taken and held in trust for the corporation which they later formed on May 18, 1911. The right to take toll would, of course, never amount to anything unless the bridge was completed.

It is, of course, axiomatic that the board of county commissioners have no inherent powers and that the powers granted to them by the legislature are to be strictly construed.

Counsel for the complainant in his brief and on the oral argument relies upon the case of *Postal Bridge Co.* v. *The State ex rel. Dabney, Attorney General* (Okla.), 282 Pac. 462, to sustain his contention that a franchise may be granted to an individual to own and operate a toll bridge in the State of Oklahoma, and that the decision is binding upon the Federal Courts construing a State statute. The case is not authority for this contention. In this case the De Luxe Bridge Co. was granted a charter on the 14th day of January, 1920, amended November 29, 1920, as a toll bridge corporation to construct such bridge at Bridgeport, in Blaine County, Oklahoma. It obtained a franchise from the Board of County Commissioners of Blaine County authorizing it to collect tolls from such bridge. The De Luxe Bridge Co. sold and assigned its franchise to operate the bridge to the Postal Bridge Co. long prior to the expiration of its corporate charter. The Postal Bridge Co. was not a corporation, but an express trust. The State instituted its suit to en-

join the Postal Bridge Co. from operating the toll bridge and collecting tolls, alleging that said De Luxe Bridge Co. was not authorized to own a franchise and to operate a toll bridge within the State of Oklahoma, and for that reason did not have any franchise or right that could be assigned or sold to the Postal Bridge Co., and that the Postal Bridge Co. was unauthorized to operate said toll bridge. It was held that a corporation having a franchise to operate a toll bridge could sell and assign such franchise to an express trust or an individual, and the corporate entity of such toll bridge corporation could not be collaterally attacked; that there is no inhibition to be found in the Constitution and statutes of Oklahoma against a toll bridge corporation from selling its secondary franchise, subject to the conditions and requirements contained in said franchise. The case is not authority sustaining the power of the County Commissioners to grant and collect tolls upon a toll bridge built over the streams of the State.

It is provided in Section 10,104, C. O. S. 1921, that County Commissioners may grant to individuals as well as corporations authority to construct bridges over a stream which constituted a state boundary line.

However, it will be observed from the sections referred to that the legislature very clearly distinguished between bridges located wholly within the state and those over streams constituting boundaries. The bridge in question over the South Canadian River lies wholly within the State of Oklahoma, and the County Commissioners of McClain and Cleveland Counties were without authority to grant to Carter et al. a franchise to take toll unless the grants were taken for the benefit of the bridge corporation which they immediately formed. This, in my opinion, was the case. This conclusion is emphasized still further by the fact that in each grant "Bridge Company" is referred to.

Counsel for complainants have referred to the case of *Grove Bridge Co.* v. *State,* 271 Pac. 846. The grant in this case was to individuals, as was permissible under the Arkansas law in force in the Indian Territory at the time of the grant.

In *Gibson* v. *Rogers County*, 181 Pac. 720, the plaintiff in error was proceeding under the Wagon Road incorporation article and not under the Bridge incorporation article.

In my opinion, it is clear that the original grantees herein were endeavoring to proceed under the Bridge Corporation article, preparatory to the formation of a corporation.

Having reached the conclusion that the franchise to take tolls has expired, it next becomes necessary to determine what becomes of a toll bridge upon the expiration of the franchise to take toll. This question has been passed on by the Supreme Court of Oklahoma in the case of *Grove Bridge Co. et al.* v. *State ex rel.*, 271 Pac. 846, and *Postal Bridge Co.* v. *State ex rel.*, 282 Pac. 462, which hold that the bridge then becomes the property of the State. It is quite clear from the authorities generally that upon the expiration of a toll franchise that the use of a bridge is free to the citizens of the state, just as other public highways. Mr. Justice Brewer, while a member of the Supreme Court of Kansas, in the case of *State ex rel.* v. *Lawrence Bridge Co.*, 22 Kan. 438, 463, stated the applicable rule, as follows:

> "For I agree with the Chief Justice that the bridge is a permanent structure on the public highway and under the authorities when the franchise to take toll ceases, the right of the public to use the bridge free from any burden of tolls attaches without any right on the part of the builders to remove the structure and destroy the highway. The right to take tolls for a specific number of years was the consideration granted by the public to the defendants for the privilege of placing this improvement on the highway, and the former owners have now no more right to remove the bridge than the owners of a turnpike to tear it up after the franchise to take tolls has ceased."

The opinion of the Chief Justice in the foregoing case is well worthy of consideration, and shows clearly that such a conclusion works no hardships on the owners of the bridge, who, as is true in the instant case, have very probably long

since been repaid many times over the cost of the construction and maintenance of the structure.

See also *Virginia Canon Toll Road Co.* v. *People*, 45 Pac. 398; *State ex rel.* v. *Scott County Road Co.*, 105 S. W. 752; *Rockwith* v. *State Road Bridge Co.*, 108 N. W. 785; *People ex rel.* v. *Anderson and U. Valley Road Co.*, 18 Pac. 308; *Grand Rapids Bridge Co.* v. *Prange*, 35 Mich. 404.

Numerous cases to the same effect are referred to in the brief of defendant in error in the case of *Scott County Road Co.* v. *State ex rel.*, 215 U. S. 336-338.

I am of the opinion that where the Bridge Corporation article was endeavored to be followed that the Board of County Commissioners could not grant a toll franchise for more than twenty years. The grants involved herein read as follows:

> "That the grants herein made shall be perpetual, subject only to such limitations as is by law now, or may hereafter, be provided."

This grant, of course, must be read in connection with the authority of the Boards of County Commissioners. In *City of Okmulgee* v. *Okmulgee Gas Co.*, 282 Pac. 640, the Supreme Court of Oklahoma held that a perpetual franchise would violate the perpetuity section of the State Constitution.

Endorsed: Filed in District Court on June 1, 1931.

Decree.

This cause came on regularly for hearing on complainants' application for a temporary injunction on May 25, 1931, and the complainants appeared by their attorney, C. B. Cochran; the defendants, J. Berry King, Attorney General of Oklahoma, and Sam Hawks, J. F. McKeel and Lew Wentz, constituting the State Highway Commission of Oklahoma, appeared by W. C. Lewis, Assistant Attorney General, and the defendants, Person Woodall, J. C. Todd, George Carpenter and George N. Church, appeared by their attorney, Person Woodall, and the defendants, Purman Wilson,

J. R. Evatt, A. O. Maddox and J. E. Colbert, appeared by their attorney, Purman Wilson. Thereupon the complainants asked permission to file an amendment to the bill of complaint, and permission was granted to file the same instanter.

Thereupon the defendants filed motions to dismiss the bill of complaint, and, by agreement of counsel for the respective parties, in open court, notice of the hearing on the motion to dismiss was waived and the court proceeded to hear said motion immediately. After hearing argument of counsel, the court continued the hearing until May 29, 1931, and ordered that the restraining order heretofore granted in this case be continued in force until that time.

Now on this 29th day of May, 1931, this cause coming on for further hearing on the defendants' motions to dismiss, and the court being well and sufficiently advised, sustains each of said motions to dismiss for the reason that the bill of complaint does not state facts sufficient to entitle the complainants to relief in equity, to which action of the court the complainants except.

It is therefore Ordered, Adjudged and Decreed that the motions to dismiss filed herein by the defendants be, and the same are, hereby sustained, and the bill of complaint is hereby dismissed for the reason that the same does not state facts sufficient to entitle the complainants to relief in equity, and the suit is accordingly dismissed at complainants' costs, to which action of the court complainants, and each of them, except, and in open court give notice of appeal to the Circuit Court of Appeals for the Tenth Circuit. The complainants further petitioned the court to preserve the status quo of the property and the operation of the toll bridge during the pendency of the appeal, in order to prevent irreparable injury to the complainants. Pursuant to agreement of the attorneys for the respective parties, in open court, and for the purpose of protecting the rights of all of the parties during the pendency of the appeal;

It is by the Court Ordered, Adjudged and Decreed that Dorset Carter, J. E. Colbert and J. C. Todd are hereby ap-

pointed Trustees, and are authorized and directed to operate the Purcell-Lexington toll bridge and collect the tolls fixed by the last order of the Corporation Commission of the State of Oklahoma from persons using said toll bridge; that said Trustees shall receive no compensation for their services, but they are authorized to pay from the funds so collected the salary of one chief toll collector in the sum of $125.00 per month, and three assistant toll collectors at a salary of $100.00 per month each, and they are further authorized to pay from the funds the cost of printing toll receipts, tickets, blank reports, premiums on bonds for toll collectors, necessary postage, and necessary repairs on the bridge, but no other payments shall be made from said funds except on order of this court.

Frank Claunch is hereby designated chief toll collector, and Tom Keller, John Kemp and A. G. Jennings are designated assistant toll collectors, and no change shall be made in such chief toll collector and assistant toll collectors, or any vacancy filled, except by the unanimous agreement of the Trustees, and if they fail to unanimously agree, the matter shall be submitted to this court for an appropriate order.

It is further ordered that the said Trustees shall begin the collection of tolls on said bridge on June 1, 1931, and shall continue to operate said bridge and collect said tolls, and hold the funds so collected, less the expenses above authorized and such other expenditures as may be authorized by order of this court, during the pendency of the appeal herein and until final determination thereof; upon final determination of said appeal, the funds shall be disbursed under order of this court.

It is further ordered that said Trustees shall deposit the funds so collected in the joint names of said Trustees in Purcell Bank & Trust Company of Purcell, Oklahoma, and/or Security National Bank of Norman, Oklahoma, said deposits to be secured by surety company bonds, or United States Government bonds.

It is further ordered that said Trustees shall cause to be printed receipts which shall be delivered by the toll collectors

to the persons paying toll for the use of said bridge, which receipts shall recite as follows:

"If upon final order of the United States District Court for the Western District of Oklahoma, it shall be determined that the tolls set out on the reverse side of this receipt were exacted and collected without authority of law, or that the bridge for which the toll paid and represented by this receipt was a public bridge, disburdened of toll, the purchaser hereof, or the holder or owner of the same, will upon surrender and cancellation thereof, within six months from the date of such final order or judgment, be entitled to a refund of the amount paid, less the pro rata part of the expenses of the operation of the bridge.

"The bridge is operated by trustees under an order of court pending the final disposition of the case, and operating expenses of the bridge will be paid from the funds received as tolls.

"If this receipt is lost, you may not participate in the refund."

Dated this 29th day of May, 1931.

F. E. Kennamer, District Judge.

O.K.—J. Berry King, Atty. Genl of Oklahoma. By W. C. Lewis, Asst. Atty. Genl.

Endorsed: Filed in District Court on May 29, 1931.

In the District Court of the United States for the Western District of Oklahoma.

Charles H. Hamill et al., Complainants, vs. Sam Hawks et al., Defendants. No. 1224—Equity.

Petition to Appeal.

Charles H. Hamill and Willoughby G. Walling, who are complainants in the above entitled cause, conceiving them-

selves aggrieved by the decree entered herein on the 29th day of May, 1931, do hereby appeal from the said decree to the United States Circuit Court of Appeals for the Tenth Circuit, for the reasons specified in the assignments of error which is filed herein, and pray that this appeal may be allowed, and that citation issue as provided by law.

Petitioners further pray that an order of supersedeas may be entered herein pending final disposition of the cause, and that the amount of security may be fixed by the order allowing this appeal.

Petitioners show that unless an order is entered herein providing for the operation of the toll bridge and the collection of tolls, and an impounding of the funds so collected pending the appeal herein, irreparable injury and damage will be sustained by the complainants, and complainants pray that this court enter a proper order protecting the rights of the parties pending the appeal.

Charles B. Cochran,
Attorney for Complainants.

Ames, Cochran, Ames & Monnet,
of Counsel.

On this June 4th, 1931, it is ordered that the appeal be allowed as prayed for, and supersedeas bond is fixed in the sum of $500.00.

F. E. Kennamer,
United States District Judge.

Endorsed: Filed in District Court on June 4, 1931.

Assignment of Errors.

Now come the appellants, Charles H. Hamill and Willoughby G. Walling, by Charles B. Cochran, their attorney, and in connection with their petition for appeal, say that in the record, proceedings and in the final decree aforesaid

manifest error has intervened to the prejudice of the appellants, to wit:

I.

The court erred in holding that the bill of complaint does not state facts sufficient to entitle complainants to relief in equity, and in sustaining the defendants' motions to dismiss the bill of complaint and entering a decree dismissing the case at complainants' costs.

II.

The court erred in holding that the franchise to take tolls on Purcell-Lexington toll bridge has expired.

III.

The court erred in holding that the Boards of County Commissioners could not grant a toll franchise for more than twenty (20) years.

IV.

The court erred in holding that the County Commissioners of McClain and Cleveland Counties were without authority to grant to Carter et al. a franchise to take toll unless the grants were taken for the benefit of the bridge corporation which they immediately formed.

V.

The court erred in holding that the bridge has become the property of the State, and that the citizens of the State are entitled to the free use of the same as other public highways.

VI.

The court erred in refusing to hold that the complainants are the owners of the bridge and that the same cannot be used or taken for the public without compensating complainants therefor.

Wherefore, appellants pray that the decree of the District Court for the Western District of Oklahoma may be reversed

and remanded with directions to proceed in accordance with the law.

Charles B. Cochran,
Attorney for Petitioners and Appellants.

Ames, Cochran, Ames & Monnet,
of Counsel.

Endorsed: Filed in District Court on June 4, 1931.

Order Allowing Appeal.

The petition of Charles H. Hamill and Willoughby G. Walling, the complainants in the above entitled cause, for an appeal from the final decree entered herein, is hereby granted and the appeal is allowed; and upon the petitioners filing a bond in the sum of $500.00, with sufficient security and conditioned as required by law, the same shall operate as a supersedeas over the decree granted and entered in the above cause until the termination of said appeal by the United States Circuit Court of Appeals for the Tenth Circuit.

It is further ordered that the Trustees appointed herein on the 29th day of May, 1931, to operate Purcell-Lexington toll bridge and to collect tolls therefrom, shall continue to operate said toll bridge and to collect tolls therefrom, and handle the funds so collected during the pendency of this appeal and until the final determination thereof, in accordance with the terms of the order entered herein on May 29, 1931.

June 4, 1931.

F. E. Kennamer,

Judge of the United States District Court
for the Western District of Oklahoma.

Endorsed: Filed in District Court on June 4, 1931.

[Bond on appeal in the sum of $500, approved by the Dis-

trict Judge, with appellants as principals and Aetna Casualty and Insurance Company of Hartford, Conn., as surety, was filed in the District Court on June 15, 1931.]

Praecipe for Transcript.

To the Honorable Clerk of Said Court:

The Clerk of the United States District Court for the Western District of Oklahoma is hereby notified that the appellants, Charles H. Hamill and Willoughby G. Walling, desire the following instruments and orders incorporated into the transcript on appeal herein to the United States Circuit Court of Appeals for the Tenth Circuit, to wit:

Bill of Complaint;

Amendment to Bill of Complaint;

Temporary Restraining Order;

Bond for Temporary Restraining Order;

Motions to Dismiss;

Final Decree;

Written Opinion of the Court;

Petition for Appeal;

Order Allowing Appeal;

Assignment of Errors;

Citation;

Praecipe for Transcript;

Bond on Appeal.

Appellants request the record be printed under the direction of the Circuit Court of Appeals for the Tenth Circuit.

Charles B. Cochran,
Attorney for Appellants.

Service of praecipe for transcript of record herein accepted this 18th day of June, 1931.

W. C. Lewis,

Attorney for Sam Hawks, J. F. McKeal and Lew Wentz, constituting the State Highway Commission of Oklahoma, and J. Berry King, Attorney General of Oklahoma.

Service of praecipe for transcript of record herein accepted this 16 day of June, 1931.

Purman Wilson,

Attorney for Defendant, Purman Wilson, County Attorney of McClain County, Oklahoma, J. R. Evatt, A. O. Maddox and J. E. Colbert.

Service of praecipe for transcript of record herein accepted this 16 day of June, 1931.

Person E. Woodall,

Attorney for Defendant, Person Woodall, County Attorney of Cleveland County, Oklahoma, J. C. Todd, George Carpenter and George N. Church.

Endorsed: Filed in District Court on June 18, 1931.

(Clerk's Certificate to Transcript.)

United States of America, Western District of Oklahoma, ss.

I, Theodore M. Filson, Clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify the above and foregoing to be a full, true

and complete transcript of the pleadings, record and proceedings, in said court, in case No. 1224, Equity, wherein Charles H. Hamill and Willoughby G. Walling, are complainants, and Sam Hawks, J. F. McKeal and Lew Wentz, constituting the State Highway Commission of Oklahoma, and others, are defendants, as full, true and complete as the said transcript purports to contain and as called for by the praecipe for transcript of the record above set forth.

I further certify that the original citation is hereto attached and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in the City of Oklahoma City, in said District, this 23rd day of June, A. D. 1931.

Theodore M. Filson, Clerk,
By Grace G. Butler, Deputy.

(Seal)

Filed June 29, 1931. Albert Trego, Clerk.

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit, viz.:

Petition for Writ of Certiorari for Diminution of the Record.

Filed Oct. 15, 1931.

To the Honorable, the Judges of the United States Circuit Court of Appeals, for the Tenth Circuit:

The petition of Sam Hawks, J. F. McKeel and Lew Wentz, constituting the State Highway Commission of Oklahoma; and J. Berry King, Attorney General of Oklahoma; Purman Wilson, County Attorney of McClain County, Oklahoma; Person Woodall, County Attorney of Cleveland County, Oklahoma; and J. R. Evatt, A. O. Maddox, J. E. Colbert, J. D. Todd, George Carpenter and George N. Church, respectfully show:

First: That heretofore on May 29, 1931, a decree in equity was duly entered in the office of the clerk of the United States District Court for the Western District of Oklahoma, which said decree directed, among other things, that the motions to dismiss the bill of complaint filed therein by the defendants be, and the same were sustained and the bill of complaint was dismissed; a copy of said decree is set forth on pages 37 to 39, inclusive, of the transcript of the record filed in this court; that on the first day of June, 1931, Hon. F. E. Kennamer, District Judge, filed in the office of the clerk of the United States District Court for the Western District of Oklahoma, his written opinion setting forth the reasons for sustaining the motion of the defendants to the bill filed by the plaintiffs; a copy of said opinion is found on pages 30 to 36, inclusive, of the transcript of the record on file herein. Subsequently proceedings were taken by said plaintiffs which were claimed by said plaintiffs to constitute an appeal to this honorable court from said decree; and at some time subsequent to June 29, 1931, what purports to be a transcript of the record below as filed in this court and said alleged transcript has been printed under the direction of said plaintiffs for use in this court upon said alleged appeal. Said alleged

appeal has not yet been dismissed and has not yet been determined.

Second: Said paper, which purports to be a transcript of said record, omits a certain portion of the same, to-wit the testimony introduced in support of the motion to dismiss said cause; and also the application of the defendants for an order approving transcript of the testimony introduced by defendants and directing the filing thereof with the court clerk and further directing the clerk to transmit the same to the clerk of the Circuit Court of the Tenth Circuit; the notice of the presentation thereof and proof of service of the same, and the order made by the Hon. Judge Kennamer upon said application.

Third: These petitioners would further show to this honorable court that at the time said cause was heard before the trial judge and at the time of the rendition of the decree by said judge, their attorneys requested Mr. E. P. Huff, the court reporter who was appointed to take the evidence at the hearing upon the motion to dismiss filed by the defendants, to prepare a transcript of the evidence so taken for filing as a part of the original record in the trial court. That said reporter did transcribe the testimony so introduced but not until after statutory time within which the defendants could file a praecipe for an amended or supplemental transcript of the record, and the attorneys for these petitioners endeavored to secure a stipulation for abridgement of said testimony from the attorneys for the plaintiffs, but that they refused to stipulate upon the ground that the same was not necessary to a decision by this honorable court. That thereafter these petitioners, by their attorneys, filed a written application with Hon. F. E. Kennamer, trial judge, asking that the testimony so transcribed be approved by the court, and directing the court clerk to file the same. That notice of said hearing was given to the attorneys for the plaintiffs and upon hearing, the Hon. F. E. Kennamer entered an order approving the testimony so transcribed, directing that the same be filed with the clerk of the United States District Court for the Western District of Oklahoma, and that the same be thereafterwards forwarded to the clerk of this honorable court.

Fourth: That the honorable judges of this court in reading the opinion heretofore referred to herein, which appears on pages 30 to 36, inclusive, of the transcript of the record on file in this court, will find on page 32 thereof that the trial court considered certain evidence introduced by the defendants upon the hearing of the motions to dismiss as appears in the fifth paragraph on page 33 of the transcript of the record, and in order for this honorable court to have before it the entire record upon which the trial judge rendered his opinion and decree, the testimony or an abridgement thereof should be printed as an amendment to the transcript of the record filed by the appellants herein.

Fifth: Petitioners would further show that should an application be made to the Supreme Court of the United States by the appellants herein for a review of the final decision of this honorable court upon said alleged appeal, there is danger lest it may be claimed by said appellants herein that the court did not consider the testimony introduced by defendants upon the motions to dismiss the bill of plaintiffs in support of their opinion and decree, wherein the motions of the appellants herein, defendants below, to dismiss the bill of complaint of the plaintiffs, were sustained; which position your petitioners wish to be allowed to dispute.

Sixth: That the appellants herein have filed their brief with this honorable court, and the appellees have refrained from filing a brief up to this time with a view of seeking to stipulate on an abridgment of the testimony introduced upon the hearing of the motions to dismiss the bill of complaint, but that they have been unable to agree with the attorneys for the appellants for an abridgment as aforesaid. That in order to prepare their brief the appellees should have the transcript of the record completed so as to show the facts in connection with said trial.

Seventh: That by reason of the above and foregoing, the petitioners have not been able to comply with the rules and regulations of this honorable court with reference to filing praecipe for amendment to the transcript of the record and other rules concerning motions for writs of certiorari, all of

which were not occasioned by the negligence of the petitioners herein, or their attorneys.

Wherefore, your petitioners pray that a writ of certiorari for *dimunition* of the record issue to the clerk of the United States District Court for the Western District of Oklahoma directing him to certify to this court at the expense of the appellees herein, the testimony introduced for the defendants in the trial below, in support of the motions to dismiss the bill of the plaintiffs or an abridgment thereof, and also the application of the defendants for an order approving transcript of the testimony introduced by defendants and directing the filing thereof with the court clerk and further directing the clerk to transmit the same to the clerk of the Circuit Court of the Tenth Circuit; the notice of the presentation thereof and proof of service of the same, and the order made by Hon. Judge Kennamer upon said application. That the appellees herein, defendants below, may be permitted to pay to said clerk the expense of certifying said testimony, and other records referred to herein, and also the printing of the same, and that your petitioners may have such other and further relief in the premises as may be just.

SAM HAWKS, J. F. McKEEL
and LEW WENTZ,
constituting the State Highway
Commission of Oklahoma; and

J. BERRY KING,
Attorney General of Oklahoma;

PURMAN WILSON,
County Attorney of McClain
County, Oklahoma;

PERSON WOODALL,
County Attorney of Cleveland
County, Oklahoma; and

J. R. EVATT, A. O. MADDOX,
J. E. COLBERT, J. C. TODD,
GEORGE CARPENTER and
GEORGE N. CHURCH,
By J. BERRY KING,
Attorney General of Oklahoma.

And W. C. LEWIS,
Assistant Attorney General.

And PURMAN WILSON,
County Attorney of McClain County, Okla.

And PERSON WOODALL,
County Attorney of Cleveland County, Okla.
Attorneys and Solicitors for Petitioners.

State of Oklahoma, County of Oklahoma, ss.

J. Berry King, Attorney General of Oklahoma, being first duly sworn, says: That he is one of the petitioners above named; that he has read the above and foregoing petition and knows the contents thereof, and that the matters and facts therein set forth are true.

J. BERRY KING,
Attorney General of Oklahoma.

Subscribed and sworn to before me this the 13th day of October, 1931. Effa Alexander, Notary Public. (Seal) My commission expires October 28, 1932.

(Order.)

Twenty-third Day, September Term, Saturday, October 17th, A. D. 1931.

Before Honorable John H. Cotteral and Honorable Orie L. Phillips, Circuit Judges.

This cause came on to be heard on the petition of appellees for a writ of certiorari for diminution of the record and was submitted to the court.

On consideration whereof, and for good cause shown, it is now here ordered by the court that said petition be and the same is hereby granted.

It is further ordered by the court that if within fifteen days from this day the clerk of the District Court of the United States for the Western District of Oklahoma has not

transmitted to this court a certified transcript and copy of the following parts of the record alleged to have been omitted from the transcript of the record on the appeal of this cause from said United States District Court, to-wit:

The testimony introduced by the defendants in the trial below in support of the motions to dismiss the bill of the plaintiffs, or an abridgment thereof,

The application of the defendants for an order approving transcript of the testimony introduced by defendants and directing the filing thereof with the clerk and further directing the clerk to transmit the same to the clerk of the United States Circuit Court of Appeals for the Tenth Circuit,

The notice of the presentation thereof and proof of service of the same, and

The order made by Honorable F. E. Kennamer, United States District Judge, upon said application,

or shown cause why he is unable to do so, the said writ shall then issue.

It is further ordered by the court that, upon receipt from the clerk of the said District Court of a certified transcript and copy of the parts of the record from the court below hereinabove mentioned, with the testimony therein stated in narrative form as required by Equity Rule 75, the same be filed and printed in conformity with the rules of this court and considered by the court as a part of the transcript of the record in this cause.

It is further ordered by the court that the clerk of this court forthwith transmit to the clerk of the United States District Court for the Western District of Oklahoma a certified copy of this order.

ADDITIONAL TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals
TENTH CIRCUIT.

No. 511

CHARLES H. HAMILL and WILLOUGHBY G. WALLING, APPELLANTS,

vs.

SAM HAWKS, J. F. McKEAL and LEW WENTZ, Constituting the State Highway Commission of Oklahoma; and J. BERRY KING, Attorney General of Oklahoma; PURMAN WILSON, County Attorney of McClain County, Oklahoma; PERSON WOODALL, County Attorney of Cleveland County, Oklahoma, and J. R. EVATT, A. O. MADDOX, J. E. COLBERT, J. C. TODD, GEORGE CARPENTER and GEORGE N. CHURCH, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

FILED NOV. 2, 1931.

In the District Court of the United States for the Western District of Oklahoma.

Pleas and proceedings before the Honorable F. E. Kennamer, Judge of the Northern District of Oklahoma, sitting by assignment in the Western District of Oklahoma, and presiding in the following entitled cause:

Charles H. Hamill and Willoughby G. Walling, Complainants, vs. Sam Hawks, J. F. McKeal and Lew Wentz,

constituting the State Highway Commission of Oklahoma; and J. Berry King, Attorney General of Oklahoma; Purman Wilson, County Attorney of McClain County, Oklahoma; Person Woodall, County Attorney of Cleveland County, Oklahoma; and J. R. Evatt, A. O. Maddox, J. E. Tolbert, J. C. Todd, George Carpenter and George N. Church, Defendants.—Equity No. 1224.

Application for Order Approving Transcript of Testimony introduced by defendants and directing filing thereof with Court Clerk and further directing the Clerk to transmit the same to the Clerk of the Circuit Court of Appeals of the Tenth Circuit.

Comes now W. C. Lewis, Assistant Attorney General of the State of Oklahoma, attorney for the defendants, the State Highway Commission of the State of Oklahoma and J. Berry King, Attorney General of Oklahoma, and moves this Honorable Court for an order approving the transcript of testimony introduced in said case and directing the filing of the same with the clerk of the United States District Court for the Western District of Oklahoma, and further ordering the clerk of said District Court to transmit the same to the clerk of the Circuit Court of Appeals of the Tenth *District* at Denver, Colorado, and as grounds therefor states:

I.

That at the trial of said cause before Honorable F. E. Kennamer, United States District Judge, the defendants introduced certain testimony in support of the motion filed by them asking the dismissal of the plaintiff's bill of complaint which is referred to in the written opinion of said District Judge filed in said cause and now appearing on page 33 of the transcript of record filed by the appellants, wherein the court stated:

> "The grant to the individuals undoubtedly from the allegations of the bill and the evidence introduced on the hearing was taken and held in trust for the corporation which they later formed on May 18, 1911. The right to

take toll would, of course, never amount to anything unless the bridge was completed."

And said Judge in his written opinion also stated therein, as appears on page 35 of the transcript of record filed as aforesaid:

"In my opinion, it is clear that the original grantees herein were endeavoring to proceed under the Bridge Corporation article, preparatory to the formation of a corporation."

II.

That under Equity Rule No. 75 of the Supreme Court of the United States, by which the Circuit Court of the Tenth Circuit of the United States is governed, it was and is the duty of the defendants to file a praecipe for additional portions of the record omitted by the appellants, within ten (10) days after the praecipe filed by the appellants; that the defendants were precluded from filing said praecipe with the clerk for the reason that the reporter who reported the proceedings did not transcribe and file with the clerk a transcript of the evidence introduced by the defendants at said trial within said period of ten (10) days, and in fact the same has not been filed at this time but was certified to by Mr. E. P. Huff, Reporter, under date of August 27, 1931, and that under the law the defendants believe the same is not permitted to be filed in said court until the same is presented to the trial judge and is by him approved, and thereafter when same is approved it must be filed in the clerk's office and become a part of the records for the purposes of the appeal.

That on the date of the rendition of the judgment by the Honorable F. E. Kennamer, the attorneys for the defendants requested the reporter to transcribe the shorthand notes containing the evidence introduced by the defendants in support of the motion to dismiss, and subsequent to said oral request directed the transcription of the same by letter;

That the State of Oklahoma has paid the fee for services of said reporter and has now in its possession the original and one copy of the transcribed testimony and desires to present it to this Honorable Court for examination and approv-

al; that a certified copy of said testimony was furnished to Honorable C. B. Cochran, attorney for the plaintiffs, on August 28, 1931; that on the presentation of said certified transcript of the testimony to the Honorable C. B. Cochran, the attorneys for the defendants sought to procure a stipulation to the effect that the same might be transmitted to the Circuit Court of Appeals for the Tenth Circuit, but that said C. B. Cochran refused to stipulate and indicated he would oppose any effort made by the attorneys for the defendants to incorporate said testimony as a part of the record.

That under the law and Supreme Court Equity Rule No. 15, which corresponds to a rule of the Circuit Court of Appeals of the Tenth Circuit, no writ of certiorari for diminution of the record will be awarded in any case, unless a printed motion therefor shall be made, and the facts on which the same is founded shall be shown, if not admitted by the other party by affidavit.

III.

That in order for the Circuit Court of Appeals to have the benefit of the evidence in connection with the opinion and decree of Honorable F. E. Kennamer, assigned Judge, and to determine whether or not the said Judge erred in his decree and holding, it is necessary that said Circuit Court have the benefit of the testimony introduced in support of the motion.

IV.

A certified copy of said testimony is attached hereto, made a part hereof, and for identification is marked Exhibit A.

V.

Defendants further represent that they desire to have the record filed with the clerk of the United States District Court for the Western District of Oklahoma for the purpose of predicating a petition for certiorari for diminution of the record to the Circuit Court of Appeals of the Tenth Circuit of the United States.

VI.

Defendants further represent to this Honorable Court that

notice of filing of this application has been served upon the attorneys for the plaintiffs as appears by acceptance of service attached hereto, marked Exhibit B, and made a part hereof.

Wherefore, these defendants pray this Honorable Court to make an order approving the transcript of the testimony attached hereto as Exhibit A and direct the filing thereof by the clerk of the United States District Court for the Western District of Oklahoma, and further directing the clerk to transmit the same as a part of the original files to the clerk of the Circuit Court of Appeals for the Tenth *District* of the United States, to be used in connection with the appeal perfected by the plaintiffs.

W. C. Lewis,
Assistant Attorney General,
Attorney for Defendants.

State of Oklahoma, Oklahoma County, ss.

W. C. Lewis, Assistant Attorney General of the State of Oklahoma, of lawful age and being duly sworn, upon oath states that he has read the above and foregoing application, knows the contents thereof, and that the matters and facts therein set forth are true.

W. C. Lewis.

Subscribed and sworn to before me this 29 day of August, 1931. Effa Alexander, Notary Public (Seal). My commission expires Oct. 28, 1932.

[Exhibit A.]

Narrative Statement of Evidence.

Be It Remembered:

That the above cause came on regularly for hearing on complainants' application for temporary injunction on May

25th, 1931, and the following evidence was offered and introduced:

Complainants offered in evidence a verified Bill of Complaint.

Complainants offered in evidence the following affidavit of Dorset Carter (omitting caption and verification):

"Dorset Carter, being first duly sworn, on oath states as follows:

On the 22nd day of April, 1911, the County Commissioners of McClain County, Oklahoma, granted to this affiant and Tom Halsell a franchise to construct and operate a toll bridge across the South Canadian at or near Purcell, Oklahoma, a copy of which franchise is attached to the bill of complaint filed herein as Exhibit A; on the 16th day of May, 1911, the Board of County Commissioners of Cleveland County, Oklahoma, granted to Tom Halsell and this affiant a franchise to construct, maintain and operate a toll bridge across the South Canadian River, a copy of which franchise is attached to the bill of complaint and marked Exhibit B. As the land adjoining the river on the West was low, and as the lines of the A. T. & S. F. Ry. Company ran North and South between the City of Purcell and the river, it was necessary and expedient to arrange for the West terminus of the bridge to be at a point West of the lines of the A. T. & S. F. Ry. Company, and on the high ground just West of such railroad. Hence on the 26th day of April, 1911, this affiant acquired from H. W. Archer and J. G. Archer, by warranty deed, the tract of land situated in the City of Purcell, McClain County, Oklahoma, described as follows:

Beginning at the Northwest corner of Block 93; thence East 49 feet along the North line of said block; thence South parallel with the West line of said block 182 feet; thence West 49 feet; thence North along the West line of said block a distance of 182 feet.

It then became necessary to acquire an easement over the

property lying between the block of land last above described and the East line of Block 93, as the contemplated bridge would extend over that land. Hence on May 27, 1911, Dorset Carter acquired by deed from Henry Braun, Trustee, an easement for the purpose of erecting a bridge thereon, and the right to do any and all acts necessary for the construction and maintenance of such bridge, to continue so long as such bridge shall be maintained, a strip of land situated on the North side of Block 93 in the City of Purcell, McClain County, described as follows:

Beginning at the Northeast corner of Block 93; thence West along the North line of said block a distance of 170 feet, thence South parallel with the West line of said block a distance of 20 feet; thence East and parallel with the North line of said block a distance of 170 feet; thence North along the East line of said block a distance of 20 feet to place of beginning.

That thereafter in order to provide an approach to said bridge, the said Dorset Carter acquired by warranty deed from H. W. Archer and J. G. Archer, on June 20, 1911, a tract of land in the City of Purcell, described as follows, to wit:

A tract of land situated in the City of Purcell, McClain County, State of Oklahoma, described as follows: Beginning at the Northwest corner of block 92; thence South along the West boundary line of said block a distance of 25 feet; thence East parallel with the North boundary line of said block a distance of 300 feet; thence North along the East boundary of said block a distance of 25 feet to the Northeast corner of said block; thence East along the North boundary of said block a distance of 300 feet to place of beginning.

Affiant further states that after obtaining the two franchises above mentioned, this affiant and the said Tom Halsell commenced arrangements for financing the building of the bridge; that prior to the time the franchises were obtained, Charles H. Hamill and Willoughby G. Walling had no connection with said franchises or the proposed construction and operation of the toll bridge, but after the franchises

were obtained, this affiant, while seeking to arrange for the financing of the construction of the bridge, succeeded in interesting the said Willoughby G. Walling and Charles H. Hamill in the project, and arranged for the said Willoughby G. Walling and Charles H. Hamill, who were at that time residents of the City of Chicago, in the State of Illinois, to furnish the money for the construction of the bridge, and as a part of the arrangement for the construction of said bridge, this affiant caused Purcell-Lexington Toll Bridge Company to be incorporated under the laws of the State of Oklahoma, under an agreement between Purcell-Lexington Toll Bridge Company and Dorset Carter, Tom Halsell, Willoughby G. Walling and Charles H. Hamill that they would deliver to Purcell-Lexington Toll Bridge Company a completed bridge, and assign, convey and transfer to said Purcell-Lexington Toll Bridge Company the franchises and parcels of land above described, in consideration of certain bonds and stock of Purcell-Lexington Toll Bridge Company.

This affiant further states that the said affiant, Willoughby G. Walling and Charles H. Hamill entered into a contract with Central States Bridge Company for the construction and erection of said bridge, and that the same was constructed and completed, and on December 6, 1911, Dorset Carter, Tom Halsell, Willoughby G. Walling and Charles H. Hamill executed a conveyance to Purcell-Lexington Toll Bridge Company, a copy of which is attached to the bill of complaint as Exhibit C, and the said Purcell-Lexington Toll Bridge Company thereby became the owner of the said toll bridge and the franchises to own, operate and maintain the same; that said conveyance was duly recorded in McClain County and Cleveland County.

Affiant further states that Purcell-Lexington Toll Bridge Company continued to own, operate and maintain said toll bridge and to collect tolls therefrom until April 2, 1931, on which date Purcell-Lexington Toll Bridge Company executed a conveyance to Willoughby G. Walling, Charles H. Hamill and Dorset Carter, conveying to them the real estate located in the City of Purcell owned by Purcell-Lexington Toll Bridge Company above described, and assigning, transfer-

ring and conveying the above described franchises, a copy of which conveyance is attached to the bill of complaint as Exhibit D.

On April 17, 1931, this affiant executed and delivered a deed to Willoughby G. Walling and Chares H. Hamill, conveying to the said Willoughby G. Walling and Charles H. Hamill all his right, title and interest in and to the property above described, and all of his right, title and interest in and to the franchises to operate a toll bridge across the South Canadian River and to collect tolls thereon, a copy of which deed is attached to the bill of complaint as Exhibit E. Affiant states that said transfer was made in good faith, for a valuable consideration and without any agreement or understanding on the part of Willoughby G. Walling and Charles H. Hamill, or either of them, to reconvey the property or any part thereof to this affiant, and said conveyance was made with the absolute purpose and intention to transfer all of the right and interest of this affiant to the said Willoughby G. Walling and Charles H. Hamill, and the said Willoughby G. Walling and Charles H. Hamill have at all times since that date been the absolute owners of said property, and this affiant has no right, title or interest in and to the same.

Affiant further states that at the time of the sale of this affiant's interest in said property to Willoughby G. Walling and Charles H. Hamill, this affiant was indebted to the First National Bank & Trust Company of Oklahoma City, Oklahoma, and said bank held the stock of this affiant in Purcell-Lexington Toll Bridge Company as collateral security; that the bank had made demand for the payment of the indebtedness, and this affiant arranged to sell Willoughby G. Walling and Charles H. Hamill his interest in the above described property for the purpose of obtaining the money to pay said indebtedness, and the consideration received by him was used for that purpose.

Affiant further states that Purcell-Lexington Toll Bridge is a structure having an East terminus on the public highway, and extending across the South Canadian River and across the tracks of the A., T. & S. F. Ry. Company, and

across a strip of land approximately 170 feet long and 20 feet wide to the West terminus, which is at or near the Northwest corner of Block 93 in the City of Purcell; that the strip of land above described across the North side of Block 92 in the City of Purcell has been used, and is still used, as an approach to said bridge, and the West end of said bridge is constructed above the land in Block 93 of the City of Purcell, which has been hereinabove described; that said bridge was constructed with a plank road extending from the East terminus across the river, the A. T. & S. F. Ry. tracks and the land in Block 93 above described, to the West terminus of said bridge, and a dirt road was maintained and is still maintained from such West terminus across Block 92 in the City of Purcell on the property above described for the purpose of the approach of wagons and other vehicles.

Affiant further states that Charles H. Hamill and Willoughby G. Walling are residents of the City of Chicago, State of Illinois, and have been residents of said State for more than twenty years."

Complainants offered in evidence the following stipulation signed by the attorneys for the respective parties (omitting caption and signatures):

"It is hereby stipulated by and between the attorneys for the respective parties hereto that, for the purpose of the hearing on complainants' application for a temporary injunction, the facts alleged in the bill of complaint are admitted to be true.

It is further admitted that the conveyance attached to the bill of complaint as Exhibit C was recorded in the office of the Register of Deeds of Cleveland County, Oklahoma, on the 12th day of December, 1911, in Book 33 at page 626, and in the office of the Register of Deeds of McClain County, Oklahoma, on December 11, 1911, in Book 28 at page 153; that the deed attached to the bill of complaint as Exhibit D was recorded in the office of the County Clerk of Cleveland County, Oklahoma, on May 15, 1931, in Book 87, at page 388,

and was recorded in the office of the County Clerk of McClain County, Oklahoma, on May 16, 1931, in Book 97, at page 112; that the deed attached to the bill of complaint as Exhibit E was recorded in the office of the County Clerk of Cleveland County, Oklahoma, on May 15, 1931, in Book 87, at page 390, and in the office of the County Clerk of McClain County, Oklahoma, on May 16, 1931, in Book 97, page 113."

Thereupon defendants filed motions to dismiss the bill of complaint and by agreement of counsel for the respective parties in open court notice of the hearing on the motion to dismiss was waived, and the court proceeded to hear said motion immediately.

After hearing argument of counsel, the court continued the hearing until May 29th, 1931.

On May 29th, 1931, the attorneys for the defendants withdrew the stipulation which had been filed on May 25th, and which is set out above, and filed an instrument designated "Admission of Defendants of Facts only for the Purpose of Hearing the Application for Temporary Injunction," which is as follows (caption and signatures omitted):

"It is admitted by the defendants that all exhibits attached to the bill of complaint filed by plaintiffs in this action are true and correct copies of the originals and that the same have been filed with the proper officers as required by the laws of the State of Oklahoma.

"It is admitted that Sam Hawks, J. F. McKeal and Lew Wentz constitute the Highway Commission of Oklahoma, and that J. Berry King is the Attorney General of said State; that Purman Wilson is County Attorney of McClain County, Oklahoma, and that Person Woodall is County Attorney of Cleveland County, Oklahoma; that J. R. Evatt, A. O. Maddox and J. E. Colbert are County Commissioners of McClain County, Oklahoma, and residents of the Eastern District of Oklahoma; that the defendants J. C. Todd,

George Carpenter and George N. Church are County Commissioners of Cleveland County, and residents of the Western District of Oklahoma.

"The defendants admit that this is an action between citizens and residents of the State of Illinois as plaintiffs and certain citizens and residents of the State of Oklahoma as defendants, but that the individual members of the Highway Commission and the Attorney General have no personal interest in the subject matter of this litigation and only represent the sovereign State of Oklahoma, and contend that the State of Oklahoma is not a citizen within the meaning of the diverse citizenship statutes.

"Defendants admit that the plaintiffs herein and Dorset Carter caused to be incorporated under the laws of Oklahoma the Purcell-Lexington Toll Bridge Company which authorized the erection, construction, building and maintaining of the toll bridge involved herein.

"Defendants further admit that the conveyances described in the bill of complaint conveying real estate described therein were executed on the days referred to and that the same were filed with the proper*ty* County Clerk.

"The defendants admit that the Purcell-Lexington Toll Bridge Company constructed the toll bridge property involved in this action and operated the same until recently.

"Defendants admit that the corporate life of the Purcell-Lexington Toll Bridge Company expired on May 18, 1931, and further admit that the Purcell-Lexington Toll Bridge Company executed the instrument marked Exhibit B to the petition herein which attempted to convey the bridge property and other property involved to Willoughby G. Walling, Charles H. Hamill and Dorset Carter, and that Dorset Carter on the 17th day of April, 1931, attempted to assign his interest in said property to the plaintiffs herein.

"The defendants admit that so far as the records are concerned Willoughby G. Walling and Charles H. Hamill are the owners of the bridge property involved herein, but it is the contention of the defendants that the bridge company

was without authority of law to transfer any interest in said property and that in fact the same constituted a fraudulent transfer. The defendants do not admit that the plaintiffs have a legal right to operate said toll bridge and collect tolls therefrom.

"The defendants admit that they are contending that the right to operate said toll bridge and collect tolls from persons using the same terminated on May 18, 1931, and that the same is at this time a part of the State Highway system of the State of Oklahoma, with the right and privilege of citizens not only of Oklahoma, but citizens of any country, using the highways of Oklahoma, to use the same as a public highway without the payment of tolls.

"The defendants admit that the individual members of the highway commission and the Attorney General as executive officers of the State intended to and will unless enjoined by this court, bring suit to prohibit the collection of tolls for the use of said bridge and to abate the same as a public nuisance.

"The defendants deny, however, that they have intended to bring suit to enforce the provisions of Sections 5372, 5373 and 5375, Compiled Oklahoma Statutes 1921, or any other statute involving punishment for crime or providing for a forfeiture."

Thereupon on request of attorneys for the defendants, they were permitted to introduce certain testimony as follows:

Dorset Carter, called as a witness for the defendants, testified as follows:

I am acquainted with the matters involved in this law suit. I am an attorney-at-law, and I was one of the persons who negotiated the movement to build the Purcell-Lexington toll bridge. I am familiar with the exhibits attached to the bill of complaint as Exhibits A and B, being secondary franchises received from the County Commissioners of McClain and

Cleveland Counties, Oklahoma. I appeared before the County Commissioners when those franchises were issued. I don't have any independent recollection as to whether I filed a written application for the issuance of those franchises with each of the Boards of County Commissioners, as that was over twenty years ago. I have not looked in my files or the files of the Purcell-Lexington Toll Bridge Company for copies of such applications. I have never thought of them since the day it happened. If I have them I will be glad to give them to you.

In answer to the interrogation by the court:

> "Did you have in mind the forming of a corporation when you entered this bridge proposition?"

the witness testified:

> "I can't say that we had. That was a long time ago, and I have built a good many things in this State—railroads, pipe lines and different things—and I know I never did take steps, or any definite way of doing anything until I got to the point where I wanted to act, because the other fellow might want it a little different than I would fix it; experience has taught me to do it that way, and I am satisfied I did not feel I had anything in mind; that when we got the money that we had to make the thing work out in whatever way I was required to do it."

The assignment to the bridge corporation was made about the time the bridge was finished.

On further direct examination the witness testified:

I do not know whether the applications to the County Commissioners of McClain and Cleveland Counties were oral or written, I cannot remember that. I was acting as my own attorney in the preliminary organization, or the things that I did down there. I think I prepared the former, which is pleaded in the bill; I didn't have any lawyer, I know that. The franchises will disclose the words used therein, and are better evidence than anything I could testify to as the words

used in the franchises. Purcell-Lexington Toll Bridge Company had negotiations on a good many times for the sale of the bridge proper, and had it sold once, before the Supreme Court of Oklahoma decided the case of Lexington-Purcell Toll Bridge Company vs. Leeper, Secretary of State, which was a mandamus proceeding, but no sale was consummated until April, 1931.

In answer to a question by the court, the witness testified:

Purcell-Lexington Bridge Corporation operated itself all the time up until the recent assignment this year. As to how much the bridge has paid above expenses of operation, the best information I have is the Corporation Commission's report. Every rate that was ever charged on the bridge has been fixed by the Corporation Commission, and there have been three rate cases tried out there in which the Corporation Commission sets out the earnings each year and the net earnings. The last annual report would show about $42,000.00 net. It is my recollection, but the figures are available even though the corporation has gone out of existence. I think the first three years the operation of the toll bridge would not pay the expenses, taking into consideration the damages that occurred and the depreciation, and we had to put up money to pay the taxes. All of those facts are a matter of record in the office of the Corporation Commission.

Statements were furnished to the Corporation Commission covering total revenues and operating expenses, 1923 to 1929. Such reports show all taxes and expenses paid, including privilege tax to the United States government and expenses.

At that point the court inquired of the Attorney General if he had the records of the Corporation Commission, and he advised that they had been sent for. The attorney for the complainants thereupon stated to the court that on a hearing for temporary injunction, the court does not have to determine the matter to the same extent as in a trial on the merits, and that if the attorneys for the defendants would permit him to go into the matter of earnings, it would

be necessary for complainants to obtain records showing reconstruction of the bridge in the past, and that the bridge had been rebuilt several times. The court stated the reason he wanted the niformation was that the matter of the financial standing of the Bridge Company has some bearings on the legal question.

On further direct examination, by counsel for the defendants, the witness stated:

I don't recall whether at the time the corporation was formed or about that time, or previous thereto, I obtained permission from the County Commissioners of McClain County and Cleveland County to built a wagon road as provided by Section 3627 of the statute. I had more trouble in financing the bridge than anything else. I knew I could get a franchise probably long before I got it. I made arrangements with some 15 or 20 people to furnish money for the bridge. They would take the plans to an engineer and he would condemn it. That was done 15 or 20 times in the course of about four years. Finally I conceived the idea that Lloyd's Insurance Company would insure anything, and I went to their offices in New York and they agreed to submit the proposition to their engineer, which was done, and they agreed to carry the insurance. I had not then decided who I would go after to finance it, but I knew that with the insurance it would be a whole lot better than an engineer's opinion, and the matter of forming a corporation, etc., I don't know just what occurred.

The court asked: "As I understand it, you formed a corporation."

The witness answered: "No, I was getting it financed before I formed a corporation, and I knew with that insurance policy I could finance it any way I wanted to."

The court asked: "Well, I thought you said they would want a corporation?"

The witness answered: "Anybody would want a corporation, no one would put money into anything like that indi-

vidually, and that I wanted a corporate right, but I didn't want to go and take one that would be wrong."

On further direct examination the witness stated:

As to whether the proceeding under the statute provided for building a wagon road by an individual or by a corporation, or whether I proceeded under the bridge statute, would be a legal conclusion, and I would not attempt to answer that. The contract price for the bridge was $59,000.00, but the contractor lost over $100,000 on the job. The last valuation put on the bridge by the Corporation Commission was $174,000. Mr. Hamill and Mr. Walling were the officers of the corporation and made out the reports filed with the Corporation Commission and sent them to me and I filed them.

On cross examination the witness testified as follows:

After the construction of the bridge there was considerable reconstruction between that date and the present time; after the bridge was completed and accepted and put into operation the approach on the east end was washed out, and we built another span of 150 feet of steel, and another approach on the end was constructed. Then we had an old floor that caused a lot of trouble and it ran up a good many thousand dollars every year. Boardman & Company of Oklahoma City built a new floor complete, took out the stringers and put in new I-beams and creosoted cross-ties and built a complete bridge floor and put in steel and concrete foundations at cost of $60,000.00. Those items were in addition to the regular maintenance and repairs.

Thereupon a copy of the Articles of Incorporation of the Purcell-Lexington Toll Bridge Company was introduced in evidence and is as follows:

Articles of Incorporation.

Be It Known, that the undersigned citizens of the State of Oklahoma do hereby voluntarily associate ourselves together for the purpose of forming a corporation under the laws of the State of Oklahoma, and do hereby certify:

First: That the name of this corporation shall be Purcell-Lexington Toll Bridge Company.

Second: That the purposes for which this corporation is formed are to erect, construct, build and maintain, or to lease or purchase and operate a toll bridge, and the approaches thereto, over and across the South Canadian River, at or near the City of Purcell, McClain County, Oklahoma, to the east banks of said river in Cleveland County, State of Oklahoma, for the passage of footmen, passengers, cattle and vehicles of all kinds, and of wires for the transmission of electric currents for speech, light or power, and for pipes and mains for water and gas; and to collect and receive tolls for such service; and to lease or to sell such rights over said bridge and the approaches thereto.

Third: That the banks on the west side of said South Canadian River, at or near Purcell, McClain County, State of Oklahoma, on which said bridge is to be constructed, is owned by said corporation, and that on the east side of said river, to wit: Cleveland County, Oklahoma, it is the purpose of said corporation to construct said bridge so as the same will have landing in a public highway situated on the section line between sections six (6) and seven (7), township six (6) north, range one (1) west, and that said corporation has obtained in writing the consent of the Board of County Commissioners of Cleveland County for the erection of such bridge.

Fourth: That the placse where its principal business is to be transacted are Purcell, Oklahoma, and Lexington, Oklahoma.

Fifth: That the terms for which the corporation is to exist is twenty (20) years.

Sixth: The number of directors or trustees of this corporation and the names and residences of such of them who are to serve until the election of such officers and their qualifications, are as follows:

G. H. Parker, Purcell, Okla.;
J. T. Stathem, Purcell, Okla.;
R. C. Boles, Purcell, Okla.

Seventh: That the amount of capital stock of this corporation shall be $100,000.00, and shall be divided into 100 shares of $100.00 each.

In witness whereof, we have hereunto subscribed our names this 17th day of May, A. D. 1911.

This certificate is issued subject to the following constitutional requirement: That the corporation to which it is issued will submit any difference it may have with employees, with reference to labor, to arbitration, as shall be provided by law.

G. H. Parker,
J. T. Stathem,
R. C. Boles.

State of Oklahoma, McClain County.

Personally appeared before me, a Notary Public in and for said county, State above named, G. H. Parker, J. T. Stathem, and R. C. Boles, who are personally known to me to be the same persons who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

In testimony whereof, I have hereunto subscribed my name and affix my notarial seal this 17th day of May, 1911. A. S. Welch, Notary Public. My commission expires June 15th, 1913 (Seal).

No. 8467. Articles of Incorporation of the Purcell-Lexington Toll Bridge Company, Purcell, Oklahoma.

Secretary's Memorandum. Oklahoma City, State of Oklahoma, Secretary's Office.

This instrument was filed for record this 18 day of May, A. D. 1911, at 9 o'clock a. m.

Recorded in Corporation Record No. 31, at page 496.

Received 5-18-11. From Dorset Carter, Purcell, Okla.

Purman Wilson, called as a witness for the defendants, testified as follows:

I am one of the defendants in this case, and I am County Attorney of McClain County. I have searched the records in the office of the County Clerk of McClain County recently, and I could not find that there had ever been filed a written application by Mr. Carter or Mr. Halsell making application to the County Commissioners for a permit to build either a wagon road or a toll bridge. I made a thorough search.

On cross examination the witness stated:

"We did not find any of the old files of the County Commissioners back in 1911. We found in the Commissioners' proceedings in the journal where a franchise had been given. We not only failed to find any franchise papers filed, but failed to find any other papers that were presented during that period."

Person Woodall was called as a witness for the defendants, and it was admitted that he would testify to the same facts concerning Cleveland County as testified to by Mr. Wilson with reference to the records of McClain County, Oklahoma.

Copies of reports made by the Bridge Company to the Corporation Commission for the years 1923 to 1928, inclusive, were introduced in evidence and showed a net revenue of the following amounts:

Year	Amount
1923	$15,507.42
1924	14,626.84
1925	29,914.64
1926	36,266.70
1927	61,857.30
1928	69,083.48

Thereupon the court asked what the net revenue of the

bridge company was according to the reports shown, and it was suggested that the same would be set down in chronological order, and it now appears as hereinabove set forth.

The court permitted the introduction of the copies after the same were certified to by the officers of the Corporation Commission, and the same are attached to the transcript of the testimony as Exhibit A.

Thereupon the following proceedings were had:

"The Court: They may be introduced with the understanding that you will authenticate them by proper certificate, subject to any corrections or errors.

Mr. Cochran: Of course, I am objecting to them on the ground that they are incompetent, irrelevant and immaterial; when the Corporation Commission has fixed the rates, those are the rates we have to charge, whether they are remunerative or not.

The Court: I assume his theory is to show what they made.

Mr. Cochran: Of course, our contention is that where a concern has a franchise, the fact that it may have received too much or too little revenue during any year or years does not deprive it of its right to continue to operate under the franchise.

The Court: Well, just read me what the net revenue is shown to be there. This will all be subject to correction if there is any error.

Mr. Lewis: I will get it in chronological order. Beginning with the year 1923, the net profit for that year was $15,431.58.

The Court: Well, I will let you introduce those, subject to correction, and you may tabulate them and show the total. What I want to know is the total. You can give me that later.

(The statements so identified and offered were thereupon

received in evidence as defendants' Exhibit No. 2, and full, true and correct copies of the same are attached to the transcript of testimony.)

The Court: Is there anything else you want to offer?

Mr. Lewis: That is all.

The Court: Do you want to introduce any further testimony, Judge Cochran?

Mr. Cochran: No.

The Court: I don't assume you care to argue the matter further. I have read your briefs.

It is my view of the law, gentlemen, that under sections 5366 to 5375, inclusive, of article 6, chapter 34, known as the bridge corporation act, the state was authorized to charter a bridge corporation for a period of 20 years, and I am of the opinion that that is the statute under which Mr. Carter and his associates attempted to proceed in 1911, when they contemplated the building and construction and operation of the bridge in controversy; that it was contemplated at the time Mr. Carter was obtaining a permit or franchise or whatever you want to term it, from the county commissioners of McClain and Cleveland Counties, that he would form a corporation and proceed with the construction and building and operation of this toll bridge. I think, as he testified, when he applied for insurance it was believed at that time that in order to construct and build and operate a toll bridge it was necessary to comply with these statutes found in chapter 34, article 6.

A corporation was formed, and all of the rights that Mr. Carter and his associates had obtained from the two counties were held by them as trustees for this bridge corporation to be formed, and it was formed and they assigned their franchise or permit from the two counties to the bridge company to operate this toll bridge.

I am of the opinion that there is no authority whatever in the statutes of Oklahoma to grant a perpetual franchise to individuals under this charter and article to build, construct

and operate a toll bridge; that when the charter of the corporation expired, the bridge and the road leading up to the abutments having been dedicated to the public use, reverted to the state, disencumbered of any right to collect tolls.

Now, section 10,104 of the Oklahoma statutes provides:

> "When any person or any bridge company incorporated under the laws of this state desires to bridge any such stream which shall be the boundary of this state at a point not nearer than 10 miles to any other bridge across such stream, they shall have the power to do so and collect a toll to be determined by the county commissioners of the county within which such bridge shall in part be situated."

That section has no application to the situation here, because it is not claimed that this bridge is a bridge on the boundary of the state.

Now, the only other statute I have been able to find is that relating to wagon road corporations, found in chapter 34, article 18, sections 5625 to 5636, inclusive. Section 5625 authorizes the formation of a wagon road corporation, and it provides:

> "Where a corporation is formed for the construction and maintenance of a wagon road, the road must be laid out as follows:"

It then gives a description of the road to be built.

Section 5626 provides the manner of making and mapping and surveying the route of such a road.

Section 5627 provides for the building of bridges and ferries on toll roads, as follows:

> "All wagon road corporations may bridge or keep ferries on streams on the line of their road, and must do all things necessary to keep the same in repair."

It would seem it was contemplated by these sections that a corporation that had been formed for the purpose of building a toll road, in order to keep the continuity of the road,

might ferry a stream or bridge a stream; that is, a road corporation.

Now, section 5636 provides:

> "When a wagon, turnpike or plank road is constructed, owned or operated by any natural person, this article is applicable to such person in like manner as it is applicable to corporations."

I have carefully gone over all of the provisions of this article, and I am unable to find that there would be any authority in the board of county commissioners of any county to make a grant of a perpetual franchise to a person to build a toll bridge under this article and the statutes unless it was contemplated it was for a connecting link to ferry or bridge a stream in order to conduct a toll road business.

Mr. Cochran: What is Your Honor going to do with the decision of the Supreme Court of Oklahoma in the Postal Bridge case construing that?

The Court: I was going to come to that. I will admit there is some language in the statute lending some color to that construction, but here is my view about the Post Bridge case as against the DeLuxe Bridge case, that seems to be the Oklahoma bridge involved at Bridgeport: As I see the facts—and I read the case again this morning—the DeLuxe Bridge Company was incorporated under the bridge laws of Oklahoma.

Mr. Cochran: It did not comply with the bridge law of Oklahoma.

The Court: Well, they said that question was immaterial in that case; it did attempt to comply. I will admit that if that direct point were involved here, the opinion would be binding upon the Federal court.

Mr. Cochran: Well, the direct point is involved in this case.

(After argument of counsel, the proceedings were continued as follows:)

The Court: The conclusion I have reached is that it would require plain and definite statutory authority for the board of county commissioners to issue even a limited franchise to take toll over any stream of the state. They can exercise no power that the statute has not authorized, and I have been unable to find any such statutory power or a statute granting any such power.

It is my conclusion that the plaintiffs are not entitled to a temporary injunction.

Of course, I reach the conclusion that the bridge disencumbered from any right to collect tolls; that the purpose of granting a franchise to collect tolls is simply to give the party a right to reimburse himself for the construction of the bridge. When he has had that franchise which the statute authorizes for that length of time, then the bridge goes back to the state disencumbered of any right to collect tolls. The consideration of that is the granting of that privilege to take a toll off of the public.

Now, I want to stay the execution of this order for a reasonable time.

Mr. Lewis: I would like to have time to file an application for a receiver.

The Court: I don't see any necessity for a receiver. All you need is somebody to collect the tolls and turn them in where they can be kept impounded. Let us do not burden the thing with the expense of a receivership.

(After further argument of counsel, the proceedings were continued as follows:)

Mr. Cochran: We have reached an agreement with reference to the handling of the funds. I wanted to inquire about when Your Honor would be back here.

The Court: Well, I can hardly tell about that.

Mr. Cochran: Well, it is possible, since we have reached an agreement in regard to the handling of the funds, that

we can draw up the papers and mail them to you at Tulsa and they can be signed over there.

The Court: I wish you would.

Mr. Cochran: Now, if I understand the way the matter is to be handled, there will be an order entered sustaining the motion to dismiss the bill of complaint on the ground that the facts stated do not entitle the plaintiffs to relief in equity, or in substance that.

The Court: Yes.

Mr. Cochran: Exceptions allowed and possibly the order will state that inasmuch as the bill of complaint is dismissed, the application for a temporary injunction is denied?

The Court: That is right.

Mr. Cochran: Then we prepare our application for allowance of an appeal from the order dismissing the bill of complaint and present that to Your Honor and that is allowed, and at the same time we apply for an injunction pending the appeal in order to protect the rights of the parties?

The Court: That is right.

Mr. Cochran: And Your Honor will make an order allowing the appeal, staying the judgment and fixing a rather nominal appeal bond, and reciting that the parties have agreed in open court that the matter will be handled pending the disposition of the case on appeal in the following way, and will recite it, and make an order that the funds be impounded?

The Court: Yes.

Mr. Cochran: Now, the agreement is that we name one commissioner from each county, and Mr. Carter, and they will issue a new form of receipt which the Attorney General will prepare and deposit the funds in the First National Bank & Trust Company of Oklahoma City, as trustee, and the order will further provide that they will pay out of the funds collected the salaries of 4 toll collectors and $25 a month on stenographer's salary to make these reports, and

will pay the necessary expenses of keeping the bridge in repair

The Court: Yes, I think that is correct.

It is hereby stipulated that the above and foregoing narrative statement of evidence, and all the proceedings in connection with the introduction of such evidence, is true and correct and may be approved by the Judge without notice.

Dated this 28th day of October, 1931.

Charles B. Cochran,
Attorney for Plaintiffs.

J. Berry King,
Attorney General,

and W. C. Lewis,
Attorneys for Defendants.

The foregoing is in all respects hereby approved and settled as a true and complete statement of the evidence and the proceedings in connection with the introduction of such evidence in the above entitled cause.

Dated this 29th day of October, 1931.

F. E. Kennamer, District Judge.

Endorsed: Filed in District Court on October 29, 1931.

Exhibit B.

Notice.

To Charles H. Hamill and Willoughby G. Walling, Plaintiffs, and C. B. Cochran, Attorney of Record for said Plaintiffs:

You are hereby notified that the defendants will present

the original of the attached carbon copy of application for order approving transcript of testimony and order directing the filing of the same with the clerk of the United States District Court for the Western District of Oklahoma, and further ordering the clerk to transmit the same as part of the original files to the clerk of the United States Circuit Court of Appeals of the Tenth *District* of the United States at Denver, Colorado, for consideration by the court when said appeal is presented; and that said application will be presented to the Honorable F. E. Kennamer, assigned Judge, who tried the case, and the same will be so presented to said Judge in the Federal Court Room at Tulsa, Oklahoma, on the 11th day of September, 1931, at the hour of 10 o'clock a. m., or as soon thereafter as the court may hear the same, and all of whcih you will take due notice.

Dated this the 29th day of August, 1931.

W. C. Lewis,
Assistant Attorney General,

Attorney for Defendants.

Acknowledgment of Service.

I hereby acknowledge service of the within and foregoing Notice and receipt of the copy of the Application referred to in said Notice, this the 29th day of August, 1931.

Charles B. Cochran,
Attorney for Plaintiffs.

Endorsed: Filed in District Court on Sept. 11, 1931.

Order.

This cause coming on for hearing before the undersigned Judge before whom this case was tried in the United States District Court for the Western District of Oklahoma upon the application of the defendants for an order approving the transcript of the testimony introduced at the trial of

said cause and directing the filing thereof with the clerk of the United States District Court for the Western District of Oklahoma, and ordering the clerk to transmit the same as a part of the original records to the clerk of the Circuit Court of Appeals for the Tenth *District* of the United States; and defendants appearing by their attorney, W. C. Lewis, Assistant Attorney General of the State of Oklahoma, and the plaintiffs appearing by their attorney, C. B. Cochran, and it appearing to the court that after due consideration of such Application, same should be granted;

It Is Therefore Ordered, Adjudged and Decreed by the court that the transcript of the testimony submitted, as Exhibit A to defendants' application be, and the same is, hereby approved as a full, true, and correct transcript of the testimony introduced by the defendants in support of their motion to dismiss the plaintiffs' bill, and in opposition to plaintiffs' application for temporary injunction; and

It Is Further Ordered that said transcript be filed by the clerk of the District Court of the United States for the Western District of Oklahoma, and that after the same is filed said clerk be, and he is hereby, direced to transmit the same to the clerk of the Circuit Court of the Tenth Circuit of the United States at Denver, Colorado, as a part of the original records in said case.

To all of which the plaintiffs excepted and their exceptions were by the court allowed.

Dated this the 11th day of September, 1931.

F. E. Kennamer,
United States District Judge.

Endorsed: Filed September 11, 1931. Theodore M. Filson, Clerk. By Glenn H. Grubb, Deputy.

(Clerks Certificate.)

United States of America, Western District of Oklahoma, ss.

I, Theodore M. Filson, Clerk of the District Court of the

United States for the Western District of Oklahoma, do hereby certify the within and foregoing to be a full, true and complete transcript of the additional portions of record, in case No. 1224, Equity, Charles H. Hamill et al., Plaintiffs, vs. Sam Hawks et al., Defendants, as full true and complete, as called for by the Order of the United States Circuit Court of Appeals for the Tenth Circuit, dated October 17th, 1931.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at office in the City of Oklahoma City, in said District, this 30th day of October, A. D. 1931.

(Seal)

Theodore M. Filson, Clerk.
By Grace G. Butler, Deputy.

Filed Nov. 2, 1931. Albert Trego, Clerk.

(OPINION.)

United States Circuit Court of Appeals
TENTH CIRCUIT.

No. 511—April Term, 1932.

Charles H. Hamill, et al., Appellants, vs. S m Hawks, et al., Appellees.	Appeal from the District Court of the United States for the Western District of Oklahoma.

[April 14, 1932.]

Mr. Charles B. Cochran (Messrs. Ames, Cochran, Ames & Monnet were with him on the brief), for appellants.

Mr. W. C. Lewis, Assistant Attorney General, and Mr. Purman Wilson, County Attorney of McClain County (Mr. J. Berry King, Attorney General, and Mr. Person Woodall, County Attorney of McClain County, were with them on the brief), for appellees.

Before Lewis, Cotteral, and Phillips, Circuit Judges. Lewis, Circuit Judge, delivered the opinion of the court.

Appellants, citizens and residents of Illinois, brought this suit to obtain protection by writ of injunction of its claimed ownership of a bridge across the South Canadian River at Purcell, Oklahoma, and its alleged right to charge and collect tolls from the public for its use. The river is the dividing line between McClain and Cleveland Counties. The bridge was constructed as a toll bridge under franchises

from those counties and was operated as a toll bridge. The issues raised by motions to dismiss is one of law,—whether the franchises had expired when the order of dismissal was entered on May 29, 1931, from which this appeal was taken.

The two franchises, exhibited with the bill, were issued to Dorset Carter and Tom Halsell. The one from McClain County on April 22, 1911, and from Cleveland County on May 16, 1911. Each granted to Carter and Halsell and their assigns the right to construct, maintain, and operate the bridge as a toll bridge and collect tolls thereon. They prescribed the same schedule of tolls to be charged, followed by this paragraph:

> "The tolls above enumerated shall not be increased by the Bridge Company except as is now, or may hereafter be legally provided, but may be reduced by said Bridge Company upon the posting by them of proper notices as is provided by law."

Each of the franchises also contained this:

> "That the grants herein made shall be perpetual, subject only to such limitations as is by law now or may hereafter be provided."

They further stated that the grantees might transfer all their rights and privileges to any individual or corporation organized under the laws of the State of Oklahoma, and that their assigns should collect the tolls.

On May 18, 1911, Dorset Carter, appellant Walling, and one Hamill caused the Purcel-Lexington Toll Bridge Company to be incorporated as an Oklahoma corporation, and the franchises that had been granted to Carter and Halsell by the two counties were transferred to the corporation. It completed the bridge, maintained and operated it, and received tolls until April 2, 1931, when it conveyed by deed whatever rights it had in the bridge and franchises to Walling, Hamill, and Carter. Carter later conveyed his interest to Hamill and Walling. This bill was filed on May 15, 1931, three days before the corporate life of the bridge company

expired. It names as defendants the three members of the State Highway Commission, the Attorney General of Oklahoma, the county attorneys of the two counties and six individuals, three of whom reside in McClain County and three in Cleveland County. The bill of complaint alleged:

> "That the defendants, and each of them, are contending that the right to operate said toll bridge and to collect tolls from persons using the same will terminate with the corporate existence of the Purcell-Lexington Toll Bridge Company on the 18th day of May, 1931, and that said bridge will at that time become a free bridge and a part of the State Highway System of the State of Oklahoma, with the right and privilege of the citizens of the State of Oklahoma to use the same as a public highway without the payment of tolls."

It is further alleged that the franchises to operate the bridge as a toll bridge and collect tolls thereon were granted to individuals and not to the corporation; that they continue in full force and effect in accordance with their terms; that the right to continue in possession and operation of the bridge and take tolls is now in the plaintiffs; that the three members of the state highway commission will, unless restrained by the court, take charge of said bridge as a part of the highway system of the State in violation of plaintiffs' rights under said franchises and thus deprive plaintiffs of their property for the use and benefit of the traveling public without compensation, and thus deprive them of the right to continue in possession of said bridge and the collection of tolls from persons using the same; that the Attorney General of the State has threatened to institute proceedings against complainants to deprive them of their claimed rights, and contends that if complainants collect tolls after May 18, 1931, they will be subject to a forfeiture of $25.00 to each person from whom toll is collected and will further be guilty of obstructing the public highway and thus be subject to a fine not exceeding $100.00 for each offense; that the county attorney of each of said counties threatened like proceedings against complainants; that citizens of the state who use and who will continue to use said bridge are so numerous

that it is impossible to make all of them parties, and the six individual defendants are named as defendants as fairly representative of the entire class of citizens who travel over and across said bridge; that because of these threatened prosecutions, both civil and criminal, the invasion of plaintiffs' rights and the taking of their property without right and without compensation, they have no adequate remedy at law; that they will be subjected to a multiplicity of suits by the defendants, and by other citizens of the State who will desire to use said bridge, and because thereof they ask that the writ of injunction may issue and their claimed rights adjudicated.

The two county attorneys and the individual defendants moved to dismiss on the ground that the bill did not state facts sufficient to entitle the plaintiff to relief. The attorney general and members of the State Highway Commission moved to dismiss on the same ground and also on the additional ground that the suit was one against the State.

Obviously, the suit is not in terms against the State, and whether the joining of the attorney general and the members of the state highway commission as defendants has the effect of making it a suit against the State insofar as they are parties depends upon an examination of the bill on its merits, which apparently charges that those officers are threatening to commit acts without right or in excess of their powers. If so construed, when controlling principles of law are applied to the allegations of the bill, the suit would not be one against the State. *Reagan* v. *Farmers L. & T. Co.*, 154 U. S. 362, 390: *Old Colony Trust Co.* v. *City of Seattle*, 271 U. S. 426, 431; *Poindexter* v. *Greenhow*, 114 U. S. 270, 285; *Weiland* v. *Pioneer Irr. Co.*, 238 Fed. 519; *M., K. & T. Ry. Co.* v. *Warehouse Commissioners*, 183 U. S. 53, 59; *Magruder* v. *Belle Fourche Valley Water Users Assn.*, 219 Fed. 72, 78; *Ex parte Young*, 209 U. S. 123. We turn then to the other ground of the demurrer.

The bill of complaint alleged that the Purcell-Lexington Toll Bridge Company was organized on May 18, 1911, for the purpose of erecting, constructing, and maintaining, or to

lease or purchase and operate the toll bridge and approaches thereto over and across the South Canadian River at or near the City of Purcell, McClain County, Oklahoma, to the east bank of said river in Cleveland County, said State, for the passage of footmen, passengers, cattle, and vehicles of all kinds, and all wires for the transmission of electric currents for speech, light or power, and for pipes and mains for water and gas, and to collect and receive tolls for such service, and to lease or sell such rights over said bridge and the approaches thereto; that said articles of incorporation provide: "That the term for which the corporation is to exist is twenty years."

Article VI of Chapter 34, Compiled Oklahoma Statutes 1921, is entitled "Bridge Corporations." The first section under that article, numbered 5366 of the compilation, reads thus:

> "The term of existence of a bridge corporation shall not exceed twenty years; and in addition to the matters required by Section 5304 (of said statutes) every corporation formed for the purpose of constructing a bridge over any stream of water must, in the articles of incorporation, specify as follows: The place where such bridge is to be built, over what stream; that the banks on both sides of the stream where such bridge is to be built are owned by such corporation, or that it has obtained in writing the consent of the owners of the banks, where the bridge is to be built, to build the bridge; or that the banks at such place are included within and part of a public highway, and in such case that the consent in writing of the board of county commissioners of the county or counties for the erection of such bridge by such corporation has been obtained, and it must file a certified copy of its articles of incorporation in the office of the register of deeds of the county or counties in which the bridge or any part thereof is situated or to be located: Provided, that nothing in this section shall be construed as regulating companies incorporated in the State of Oklahoma for the purpose of erecting and maintaining

bridges across boundary streams or streams between the State of Oklahoma and any other state or territory."

The following Section 5367 provides:

"No such corporation shall construct or take tolls on a bridge until authority is granted therefor by the board of county commissioners of the county or counties in which it is to be located."

The Article further provides for the posting of the rates of tolls, the collection thereof, and annual report by the bridge corporation to the boards of county commissioners showing cost of construction, appendages and appurtenances of the bridge, the amount of money expended thereon since construction for repairs and incidental expenses, the capital stock, how much paid in and how much actually expended on the bridge, the amount received for tolls during each year, the amount of dividends, the indebtedness of the corporation and for what incurred, the net amount of profits, and such other facts respecting the business of the corporation as the board of county commissioners may require. The corporation is also required to publish for four weeks in a newspaper published in the town or city nearest such bridge its annual report, and a penalty is provided for failure to do so. The statute gives authority to collect tolls from those who use the bridge and provides a penalty in favor of the corporation owning the bridge against those who forcibly or fraudulently cross over the bridge without paying the legal toll. It is further provided that the corporation shall not demand or receive toll whenever the bridge is not in good and safe condition for use.

The grants from each county to construct and maintain the bridge and collect tolls were in terms to be perpetual, and there was no law or constitutional provision in effect when they were made, or now, that prohibited or limited such grants as to duration, nor were there prohibitions against making such grants to individuals and their assigns. But it was argued that by necessary implication such grants could be made only to a bridge company organized as a cor-

poration under the laws of the State, and that the charter of such company being limited to an existence of twenty years without express power of renewal the franchise to maintain the bridge and take tolls expired with the corporate life of the Purcell-Lexinton Toll Bridge Company on May 18, 1931. It is further argued that references in the grants to the "Bridge Company" indicate clearly that the two individuals to whom the grants were made took the grants for the company to be formed which would have been a compliance with the terms of the statute, and that individuals according to the terms of the statute could not take such grants in their own interests. Conceding the last proposition to be sound, it does not stand in the way of the right of said bridge compay to convey, as it did on April 2, 1931, all of its rights to maintain the bridge and collect tolls to Walling, Hamill, and Carter during the existence of the franchises thereafter as long as they continued. It was so decided by the Supreme Court of Oklahoma in *Postal Bridge Company* v. *State ex rel. Dabney, Attorney General,* 282 Pac. 462. In *Central Pacific Railroad* v. *California,* 162 U. S. 91, 124, the Supreme Court said of franchises of this nature:

> "Generalized and divested of the special form which it assumes under a monarchial government based on feudal traditions, a franchise is a right, privilege or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration, either by the government directly, or by public agents, acting under such conditions and regulations as the government may impose in the public interest, and for the public security. Such rights and powers must exist under every form of society. They are always educed by the laws and customs of the community. Under our system, their existence and disposal are under the control of the legislative department of the government, and they cannot be assumed or exercised without legislative authority. No private person can establish a public highway, or a public

> ferry, or railroad, or charge tolls for the use of the same, without authority from the legislature, direct or derived. These are franchises. No private person can take another's property, even for a public use, without such authority; which is the same as to say, that the right of eminent domain can only be exercised by virtue of a legislative grant. This is a franchise."

They are property rights of value and are entitled to protection against invasion or destruction as long as they exist according to their terms, when the granting power that gives them acts within authority conferred upon it. The Supreme Court of Oklahoma has not held that such franchises can be granted only to an Oklahoma corporation, nor that they cannot be made perpetual, nor that they are not assignable, nor that they do not continue beyond the life of the corporation to which they are first issued, if they have been issued for a longer term than the life of the corporation. It has been held (Postal Bridge Company case, *supra*) that they may be assigned to, exercised and enjoyed by individuals; and we believe the general rule of law, both state and national, to be that in the absence of such prohibitions they continue to exist as valid contracts in favor of assignees.

We find no reason for saying such franchises may not be issued in the first instance to individuals. The Oklahoma Supreme Court in the Postal Bridge Company case referred to the fact that such franchises could be held and enjoyed by individuals who had a franchise for a toll road where it became necessary on the line thereof to erect and maintain such bridges; also it is provided in Section 10104 of the state statutes that individuals can obtain such franchises to erect and maintain bridges and collect tolls where they bridge streams which are boundary lines of the State. It therefore seems to us in view of what has been said that the implication that these franchises could not be granted for more than twenty years does not arise and cannot be deduced from the terms of said Section 5366; but that the two counties had the power to grant these perpetual franchises, that they were assignable to the plaintiffs, and they are now vested property rights in them.

The power is educed from Section 5793, Compiled Oklahoma Statutes, which gives to county boards general authority to construct and repair bridges and to open and lay out highways and perform such other duties required by law, and from said Sections 5366 and 5367, *supra*. The Supreme Court of Michigan in *Grand Rapids Bridge Co.* v. *Prange*, 35 Mich. 400, held that a statute of that state, identical in substance to said 5367 of the Oklahoma Statutes, was alone sufficient to confer power on the board to fix the term of existence of a franchise to construct and maintain a toll bridge and collect tolls for its use, regardless of whether the term so fixed be coincident with the life of the grantee. The Grand Rapids Bridge Company sued Prange for tolls which he had refused to pay. The corporate life of the company had not expired, but its twenty year franchise had expired when the claimed tolls were incurred. Chief Justice Cooley speaking for the court in that case said:

> "The purpose of the organization was to build the bridge in question; but as the river at this point was a navigable stream, the assent of the supervisors of the county was essential before the bridge could be constructed.—Comp. L. 1871, Sec. 2649. The same board was also by law the competent authority to fix the tolls. The assent was given by resolution of the board dated January 17, 1852 (one year after the bridge company was organized), 'to erect, rebuild, repair and keep up and use for the sole use and profit of said company, a toll-bridge, * * * for the term of twenty years;' and the tolls were fixed at the same time. The bridge was duly constructed and tolls collected of passengers for the term of this permission, but after the twenty years had expired, the defendant refused any longer to pay tolls, and passed over the bridge repeatedly without doing so. The plaintiff, claiming the right to continue to exact tolls according to the established rates, has brought this suit."

The bridge company contended in that case that it was organized for the purpose of constructing the bridge with a life of thirty years and that its franchise to take tolls could not

be restricted to a shorter term. Chief Justice Cooley in response to that contention said:

"* * * and it cannot be doubted that the board might in advance have negotiated with the parties proposing to form a corporation, and required of them, as a condition of assent to the building of the bridge, that the corporate life should be limited to any number of years specified. There might be reasons in the growing business of the place and of the river which would seem to require such a limitation; and the authority conferred upon the local board to give or withhold assent would lose very much of its value if it were confined within unvarying limits. It is not unreasonable to suppose that consent might sometimes be withheld under such circumstances when otherwise it would not be.

"But if the supervisors could bargain for a limitation of time before the corporate organization, so they could afterwards. The plaintiff by the organization only acquired corporate powers; it gained nothing that was originally within the control of the supervisors. The board was bound by nothing that so far had been done. The members of the board may not in any manner have become aware of the steps to organize until application was made to them for permission to construct the bridge, and they were at liberty to act on such public considerations as were then presented, and with no more concession of privilege than they supposed the public interest to require. They might have consented for five years, leaving a future board at the end of that time to consent, or refuse to consent, according as the public good would appear to be consulted by the one course or by the other. On this part of the case there does not appear to us to be any serious question.

* * * * * * * * * *

"* * but there is a question of the continued existence of the franchise to take tolls. That franchise was distinct from the corporate franchise, and came into

existence by grant, not directly from the State, but from the local board. The estate of the corporation in it was expressly limited to twenty years; and when that period came to an end, the estate ceased also. * * *. in this case the franchise in dispute is one which only theoretically proceeds from the State. The board of supervisors confer it, * * *."

The width of streams, the extent and effects of flood waters, the cost of construction and maintenance of bridges, and the amount and character of probable use are all variable and material elements for the board's consideration in issuing the franchise. Here the two boards were in agreement that it should be perpetual.

These franchises being perpetual and assignable extended beyond the life or lives of the first takers, whether corporate or individual, according to the settled rules. And the legislature in conferring power on counties to issue them and the counties in executing that power acted in discharge of proprietary or business powers, as distinguished from their governmental powers, so that the relation between them and the party to whom the franchises were issued was contractual. *Illinois T. & S. Bank* v. *Arkansas City*, 76 Fed. 271; *Pikes Peak Power Co.* v. *Colorado Springs*, 105 Fed. 1; *City of Winona* v. *Botzet*, 169 Fed. 321; *Louisville* v. *Cumberland Tel. Co.*, 224 U. S. 661; *Detroit* v. *Detroit Citizens St. Ry. Co.*, 184 U. S. 368, 394, 395; *Owensboro* v. *Cumberland Tel. Co.*, 230 U. S. 58, 70, 71; *Boise Water Co.* v. *Boise City*, 230 U. S. 84; *Old Colony Trust Co.* v. *Omaha*, 230 U. S. 100; *Covington* v. *South Covington St. Ry. Co.*, 246 U. S. 413, 416; *No. Ohio Trac. Co.* v. *Ohio*, 245 U. S. 574; *Calder* v. *Michigan*, 218 U. S. 591, 600. The cases in the supreme court just cited state the rule that a corporation is capable of taking grants of franchises of a longer duration than its own corporate existence, and that where a franchise is issued to A and assigns without limit of duration it is perpetual. See, also, *City and County of Denver* v. *Denver Tramway Corp.*, 23 Fed. (2d) 287, 299, 300. In *State* v. *Des Moines City Ry. Co.*, 159 Iowa 259, 140 N. W. 437, 457, the supreme court of that state said:

> "If, however, the grant is to successors or assigns, it does not terminate with the life of the corporation to which it is granted, but may be for a term beyond the corporate life of the original grantee."

In *State ex rel.* v. *Laclede Gas-Light Co.*, — Mo. —, 14 S. W. 974, the court said:

> "The capacity of a corporation to take, and its power to convey property, real, personal, or mixed, differs in no essential particular from the capacity and power of natural persons in like circumstances (citations). To deny this proposition would be to deny to an individual the capacity to take title in fee, because life's narrow span would not admit of his perpetual enjoyment of the title thus taken. But this is not the only answer to this objection. The contract in question was entered into not only with the St. Louis Gas-Light Company, but with its 'successors and assign,' * * *."

In *State ex rel.* v. *Scott County Road Co.*, — Mo. —, 105 S. W. 752 (S. C., 215 U. S. 336), the same legislative act that incorporated the company for fifty years limited its right to take tolls to fifty years. In *People ex rel.* v. *Anderson, etc. Co.*, — Calif. —, 18 Pac. 308, the right to take tolls on a wagon road was limited to fifteen years, and the court necessarily held that it became a public road at the end of the period stated. In *Rockwith* v. *State Road Bridge Company*, — Mich. —, 108 N. W. 785, the court held that the bridge company's right to take tolls ceased on expiration of the corporate life of the company, because the grant was only to the company, and not to it, its successors and assigns. In *State* v. *Lawrence Bridge Co.*, 22 Kan. 308, the legislative act of the Territory of Kansas granted to B et al., or their assigns, the exclusive right or privilege of building and maintaining a bridge across the Kaw River for the period of twenty-one years. A corporation was organized by the grantees which took over and exercised the rights given in the franchise. It was held that the franchise rights to maintain the bridge as a toll bridge expired at the end of the twenty-one years. In *Virginia Canon Toll Road Co.* v.

People, 22 Colo. 429, it appears that a wagon road company was organized in December, 1865, under a statute that gave it corporate existence for twenty years. The wagon road company was organized for the purpose of constructing and operating a toll road. It did so until October, 1881, when it transferred all rights it had, if any, to the toll road company, and it then operated for a time the toll road which had been constructed by the wagon road company, whereupon its rights were challenged by quo warranto. Each company had a corporate existence of twenty years, and the toll road company contended that the property it had acquired from the wagon road company was valuable only in case it had the right to collect tolls, that it was organized to operate the toll road, and unless it could do so it would be deprived of its property without due process. It does not appear whether a time limit was fixed to the franchise to take tolls, nor whether those rights were made assignable. The court held that the toll road company acquired from the wagon road company only such rights as the latter had, and inasmuch as its rights had expired with its corporate life the toll road company had no rights thereafter. It was further held that inasmuch as the Colorado Constitution prohibited the granting of irrevocable franchises by the General Assembly, the prohibition could be evaded if assignments of such grants were permissible. This case does not, in our judgment, have application to the facts here in hand.

It has been suggested that Section 32 of Article II, entitled Bill of Rights, in the Oklahoma Constitution prohibits perpetual franchises, and that it was so intimated, if not decided in *City of Okmulgee* v. *Okmulgee Gas Company,* 140 Okla. 88, 282 Pac. 640, 651. Bouvier's Law Dictionary defines Bill of Rights:

> "A formal and public declaration of popular rights and liberties. The English Bill of Rights is a statute passed in 1689, affirming and asserting certain rights of the British people. In the United States, such bills have been incorporated with the constitutions of many of the states."

The subject is dealt with extensively in Blackstone's Com-

mentaries, Book 1, Chap. I, entitled "Of the Absolute Rights of Individuals." Said Section 32 in the Oklahoma Constitution reads:

> "Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State."

We do not doubt that the word "perpetuities" in said section was not intended to mean or be equivalent to perpetual franchises, but was intended to limit the power to pass titles that would vest *in futuro*. It was so applied by the Supreme Court of Oklahoma in *McLaughlin v. Yingling*, 213 Pac. 552, and in *Re Street's Estate*, 280 Pac. 413. See 48 C. J. 929; Kent's Commentaries on American Law, Vol. 4, p. 267. We find only one constitutional provision in Oklahoma on franchises. It is Sec. 7, Article XVIII, entitled Municipal Corporations, and reads: "and no exclusive franchise shall ever be granted." Section 47 of Article IX does, however, provide, that the legislature may annul charters or franchises in such manner that no injustice shall be done to the incorporators. Also, Section 10076 of the state statutes authorizes the purchase or condemnation of the rights of persons or corporations in toll bridges. The franchises here under consideration are not exclusive. The threatened action of the state officials as charged in the bill of complaint are threats to commit unlawful acts against rights and property of the complainants, and would be outside their powers as such officials and unjustified under the rule announced in *Cline* v. *Frink Dairy Company*, 274 U. S. 445, and by this court in a recent opinion in *Boynton, Attorney General*, v. *Ellis*, — Fed. (2d) —. This suit is not against the State, as contended by said officers.

The decree of dismissal is reversed with direction to the court below to issue the injunction prayed for in the bill.

(Decree.)

Fourth Day, April Term, Thursday, April 14th, A. D. 1932.

Before Honorable Orie L. Phillips, Circuit Judge, Honorable George T. McDermott, Circuit Judge, and Honorable John C. Pollock, District Judge.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause be and the same is hereby reversed; that this cause be and the same is hereby remanded to said District Court with direction to issue the injunction prayed for in the bill; and that Charles H. Hamill and Willoughby G. Walling, appellants, have and recover of and from Sam Hawks, J. F. McKeal and Lew Wentz, constituting the State Highway Commission of Oklahoma; and J. Berry King, Attorney General of Oklahoma; Purman Wilson, County Attorney of McClain County, Oklahoma; Person Woodall, County Attorney of Cleveland County, Oklahoma; and J. R. Evatt A. O. Maddox, J. E. Colbert, J. C. Todd, George Carpenter and George N. Church, appellees, their costs herein.

(Clerk's Certificate.)

United States Circuit Court of Appeals, Tenth Circuit.

I, Albert Trego, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Western District of Oklahoma, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Tenth Circuit, and full, true and complete copies of all the pleadings, record entries and proceedings requested by the praecipe filed herein, including the opinion, (except full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States), had and filed in the United

States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said United States Circuit Court of Appeals for the Tenth Circuit wherein Charles H. Hamill et al. were appellants and Sam Hawks et al. were appellees, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at office in the City of Denver, Colorado, this 3rd day of June, A. D. 1932.

ALBERT TREGO,
Clerk of the United States Circuit
Court of Appeals, Tenth Circuit.

(Seal, U. S. Circuit Court
of Appeals, Tenth Circuit)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(2637)